



# IOWA ADMINISTRATIVE BULLETIN

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Pages 1541 to 1632

## CONTENTS IN THIS ISSUE

Pages 1557 to 1627 include **ARC 3231B** to **ARC 3274B**

### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Notice, Parking, amend 11—100.1, adopt  
11—ch 101, rescind 401—ch 4 **ARC 3247B** ... 1557

### AGENDA

Administrative rules review committee ..... 1546

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Filed, Weights and measures, amendments to  
ch 85 **ARC 3231B** ..... 1596

### ALL AGENCIES

Schedule for rule making ..... 1544  
Publication procedures ..... 1545  
Administrative rules on CD-ROM ..... 1545  
Agency identification numbers ..... 1555

### COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]"umbrella"

Delay, Postsecondary schools—approval  
criteria, 21.1"10" ..... 1628

### DELAYS

Medical Examiners Board[653]  
Physician supervision of a physician  
assistant—grounds for discipline, 21.4  
Delay Lifted ..... 1628  
College Student Aid Commission[283]  
Postsecondary schools—approval criteria,  
21.1"10" Delay ..... 1628  
Human Services Department[441]  
Adoption subsidy program, 130.3(3)"ab,"  
amendments to ch 201 Delay ..... 1628

### EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Notice, Driver education teaching endorsement,  
14.141(6) **ARC 3256B** ..... 1561  
Filed, Combined endorsement—superintendent  
and AEA administrator; national standards  
for school leaders, 14.142(3), 14.142(4)  
**ARC 3255B** ..... 1596

Filed, Evaluator endorsement and license,  
20.1 to 20.9, 20.51 to 20.60 **ARC 3257B** ..... 1596

### EDUCATION DEPARTMENT[281]

Notice, Vocational rehabilitation services  
division, 5.3(1), 5.16, ch 56 **ARC 3264B** ..... 1561  
Notice, AEA media centers, rescind ch 70  
**ARC 3265B** ..... 1574  
Notice, AEA educational services,  
rescind ch 71 **ARC 3266B** ..... 1574  
Notice, Standards for practitioner preparation  
program, 79.13(2) **ARC 3267B** ..... 1575

### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Amended Notice, Health effects value (HEV),  
20.2, ch 32 **ARC 3261B** ..... 1575

### HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Notice, Description of organization,  
1.1 to 1.9 **ARC 3270B** ..... 1576

### HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Notice, Wireless E911 emergency  
communications fund—eligible costs for  
recovery by wireless service provider,  
10.9(3)"b" **ARC 3271B** ..... 1581  
Filed Emergency, Wireless E911 emergency  
communications fund—eligible costs for  
recovery by wireless service provider,  
10.9(3)"b" **ARC 3272B** ..... 1594

### HUMAN SERVICES DEPARTMENT[441]

Delay, Adoption subsidy program, 130.3(3)"ab,"  
amendments to ch 201 ..... 1628  
Notice, Patient in civil commitment unit for  
sexual offenders—no granting of hearing  
of appeal regarding patient treatment  
intervention, 7.5(2) **ARC 3274B** ..... 1582

## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other “materials deemed fitting and proper by the Administrative Rules Review Committee” include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers’ Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)“a”]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

**PLEASE NOTE:** *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

- Filed Emergency, Extension of Medicaid eligibility for expanded specified low-income Medicare beneficiaries, 75.1(36) **ARC 3248B** ..... 1594
- Filed, Medicaid coverage for maternal health centers; expansion of staff degree areas, 78.25, 79.1(2) **ARC 3249B** ..... 1596
- Filed, County and multicounty juvenile detention homes and juvenile shelter care homes, amendments to ch 105 **ARC 3250B** ..... 1598
- Filed, Foster care placement category—supervised apartment living, amendments to chs 108, 150, 156, 185, 202 **ARC 3251B** ..... 1601

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

- Filed, Update and cleanup of rules; hospices and home health agencies—criminal history and dependent adult abuse background checks, 50.1 to 50.3, 50.6 to 50.9, rescind ch 52 **ARC 3254B** ..... 1602
- Filed, Long-term care facilities—veteran eligibility, 58.12(1), 64.6, 65.10 **ARC 3252B** ..... 1602
- Filed, Paid nutritional assistants, 58.24(9) **ARC 3253B** ..... 1603

**LOTTERY AUTHORITY, IOWA[531]**

- Filed, General, adopt 531—chs 1 to 6, 11 to 14, 18 to 20; rescind 705—chs 1 to 8, 11, 13, 14 **ARC 3273B** ..... 1603

**MEDICAL EXAMINERS BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Delay Lifted, Physician supervision of a physician assistant—grounds for discipline, 21.4 ..... 1628
- Filed Emergency, Physician supervision of a physician assistant, 21.4(1) to 21.4(4) **ARC 3232B** ..... 1595

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- Notice, Mooring of vessels on riparian property of the state, 40.49 **ARC 3259B** ..... 1582
- Notice, Increase in cabin rental fees in five state parks, 61.4(1)“a” **ARC 3260B** ..... 1583
- Notice, Endangered and threatened plant and animal species—exemption for private landowners that voluntarily implement conservation measures, 77.4(9) **ARC 3258B** ..... 1583

**PHARMACY EXAMINERS BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Notice, Licensed health care provider to register as pharmacy technician, 3.3, 3.4, 3.29 **ARC 3241B** ..... 1584
- Notice Terminated, Labeling of prescription medication container, 6.10(1)“g” **ARC 3237B** ..... 1585
- Notice, Labeling of prescription medication container, 6.10(1)“g” **ARC 3242B** ..... 1585

Notice, Transmission of prescription drug order to pharmacy by authorized prescriber’s agent; prohibition of dispensing of prescription drug under certain conditions, 8.19(2), 8.19(4)

**ARC 3243B** ..... 1585

Notice, Business entities required to maintain registration—addition of reverse distributors, 10.1 **ARC 3244B** ..... 1586

Notice, Computer-to-computer transmission of a prescription drug order—definition and authorized prescriber, 21.8 **ARC 3245B** ..... 1586

Filed, Pharmacy technicians—maintenance of confidentiality of patient information, 3.28(2) **ARC 3238B** ..... 1619

Filed, Authorization by patient for release of confidential information or for delivery of medication; pharmacist identification badge, 8.4(4), 8.15(1), 8.16 **ARC 3239B** ..... 1619

Filed, Required label information, 20.10 **ARC 3240B** ..... 1620

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

- Notice, Dietitians, 81.4, 81.9, 81.11 to 81.14, 84.1 **ARC 3234B** ..... 1587
- Notice, Massage therapists, 130.4, 130.6, 131.8, 131.11 to 131.13, 132.4, ch 134, 135.1 **ARC 3233B** ..... 1588

**PUBLIC HEALTH DEPARTMENT[641]**

- Filed, Radiation, amendments to chs 38 to 42, 45, 46 **ARC 3268B** ..... 1620
- Filed, Renovation, remodeling, and repainting—lead hazard notification process, 69.2, 69.3(2), 69.4(2), 69.9 to 69.11 **ARC 3263B** .... 1622
- Filed, Lead-based paint activities, amendments to ch 70 **ARC 3269B** ..... 1622

**PUBLIC HEARINGS**

- Summarized list ..... 1550

**REGENTS BOARD[681]**

- Notice, Removal of specific amounts for admission fees, 1.1, 1.2, 2.27 **ARC 3262B** ..... 1592

**TRANSPORTATION DEPARTMENT[761]**

- Filed, Regulations applicable to carriers, 520.1(1) **ARC 3235B** ..... 1624
- Filed, Driver education; motorcycle rider education (MRE); motorized bicycle rider education, 600.12 to 600.14, ch 634, 635.2(2), 635.6, 635.7, ch 636 **ARC 3236B** ..... 1627

**USURY**

- Notice ..... 1593

**VOLUNTEER SERVICE, IOWA COMMISSION ON[555]**

- Filed, Quorum of voting members; appeals process for staff and committee decisions, 1.1, 1.2, 5.1 **ARC 3246B** ..... 1627

## Schedule for Rule Making 2004

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04
Jan. 16	Feb. 4	Feb. 24	Mar. 10	Mar. 12	Mar. 31	May 5	Aug. 2
Jan. 30	Feb. 18	Mar. 9	Mar. 24	Mar. 26	Apr. 14	May 19	Aug. 16
Feb. 13	Mar. 3	Mar. 23	Apr. 7	Apr. 9	Apr. 28	June 2	Aug. 30
Feb. 27	Mar. 17	Apr. 6	Apr. 21	Apr. 23	May 12	June 16	Sept. 13
Mar. 12	Mar. 31	Apr. 20	May 5	May 7	May 26	June 30	Sept. 27
Mar. 26	Apr. 14	May 4	May 19	May 21	June 9	July 14	Oct. 11
Apr. 9	Apr. 28	May 18	June 2	June 4	June 23	July 28	Oct. 25
Apr. 23	May 12	June 1	June 16	June 18	July 7	Aug. 11	Nov. 8
May 7	May 26	June 15	June 30	July 2	July 21	Aug. 25	Nov. 22
May 21	June 9	June 29	July 14	July 16	Aug. 4	Sept. 8	Dec. 6
June 4	June 23	July 13	July 28	July 30	Aug. 18	Sept. 22	Dec. 20
June 18	July 7	July 27	Aug. 11	Aug. 13	Sept. 1	Oct. 6	Jan. 3 '05
July 2	July 21	Aug. 10	Aug. 25	Aug. 27	Sept. 15	Oct. 20	Jan. 17 '05
July 16	Aug. 4	Aug. 24	Sept. 8	Sept. 10	Sept. 29	Nov. 3	Jan. 31 '05
July 30	Aug. 18	Sept. 7	Sept. 22	Sept. 24	Oct. 13	Nov. 17	Feb. 14 '05
Aug. 13	Sept. 1	Sept. 21	Oct. 6	Oct. 8	Oct. 27	Dec. 1	Feb. 28 '05
Aug. 27	Sept. 15	Oct. 5	Oct. 20	Oct. 22	Nov. 10	Dec. 15	Mar. 14 '05
Sept. 10	Sept. 29	Oct. 19	Nov. 3	Nov. 5	Nov. 24	Dec. 29	Mar. 28 '05
Sept. 24	Oct. 13	Nov. 2	Nov. 17	***Nov. 17***	Dec. 8	Jan. 12 '05	Apr. 11 '05
Oct. 8	Oct. 27	Nov. 16	Dec. 1	Dec. 3	Dec. 22	Jan. 26 '05	Apr. 25 '05
Oct. 22	Nov. 10	Nov. 30	Dec. 15	***Dec. 15***	Jan. 5 '05	Feb. 9 '05	May 9 '05
Nov. 5	Nov. 24	Dec. 14	Dec. 29	Dec. 31	Jan. 19 '05	Feb. 23 '05	May 23 '05
***Nov. 17***	Dec. 8	Dec. 28	Jan. 12 '05	Jan. 14 '05	Feb. 2 '05	Mar. 9 '05	June 6 '05
Dec. 3	Dec. 22	Jan. 11 '05	Jan. 26 '05	Jan. 28 '05	Feb. 16 '05	Mar. 23 '05	June 20 '05
***Dec. 15***	Jan. 5 '05	Jan. 25 '05	Feb. 9 '05	Feb. 11 '05	Mar. 2 '05	Apr. 6 '05	July 4 '05
Dec. 31	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05

### PRINTING SCHEDULE FOR IAB

#### ISSUE NUMBER

#### SUBMISSION DEADLINE

#### ISSUE DATE

22

Friday, April 9, 2004

April 28, 2004

23

Friday, April 23, 2004

May 12, 2004

24

May 7, 2004

May 26, 2004

#### PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

\*\*\*Note change of filing deadline\*\*\*

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The Administrative Rules Review Committee will hold a special meeting on Monday, April 12, 2004, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

- Contested cases, rescind 401—ch 6, 471—ch 6, 581—ch 26;  
 adopt 11—ch 7, Notice **ARC 3226B** ..... 3/17/04
- Accounting, renumber 701—chs 201 to 204 and 210 as 11—chs 40 to 44 and 48;  
 amend 41.1(1), 41.1(2), 41.2(1), 41.4(2), 41.5(4), 41.5(6), 42.1, 43.4, 43.5, 43.7, 44.11,  
 48.1, 48.3(2), 48.4, 103.3(1), 103.4(4), 103.4(5), 103.15, Notice **ARC 3213B** ..... 3/17/04
- Performance review; equal employment opportunity and affirmative action,  
 renumber 581—chs 13, 20 as 11—chs 62, 68; amend 62.1, 62.2(1), 62.2(2), 62.3, 68.1,  
 68.2(2), 68.3(2) to 68.3(4), 68.3(6)“d”(4), 68.3(7), 68.5, 68.6, 68.6(2), Filed **ARC 3212B** ..... 3/17/04
- Parking; capitol complex operations, rescind 401—ch 4;  
 amend 11—100.1, adopt 11—ch 101, Notice **ARC 3247B** ..... 3/31/04

#### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

- Scrapie disease, 64.200 to 64.211, Notice **ARC 3227B** ..... 3/17/04
- Weights and measures, 85.2, 85.3, 85.5, 85.12, 85.17, 85.18(3) to 85.18(8),  
 85.29, 85.39, 85.42, 85.48(11), 85.53(1), Filed **ARC 3231B** ..... 3/31/04

#### **CULTURAL AFFAIRS DEPARTMENT[221]**

- Cultural and entertainment districts, adopt ch 9, Filed **ARC 3228B** ..... 3/17/04

#### **DEAF SERVICES DIVISION[429]**

HUMAN RIGHTS DEPARTMENT[421]“umbrella”

- Division procedures and services; commission voting procedures; fees; forms,  
 1.2, 1.3(4), 1.3(5)“c,” 2.1, 2.3(1)“c” and “d,” 2.3(2) to 2.3(5), 2.3(6)“c,” 2.3(7),  
 2.3(8), 2.4(2)“c,” 2.4(3), 3.14(2)“e,” 4.1(9) to 4.1(13), Filed **ARC 3224B** ..... 3/17/04

#### **ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

- Iowa community development block grant program, 23.2, 23.4(4), 23.7(1),  
Filed **ARC 3215B** ..... 3/17/04
- Community economic betterment program—wage thresholds,  
 53.6(1), Filed **ARC 3216B** ..... 3/17/04
- Enterprise zones, 59.8, 59.8(1)“a” to “c,” 59.8(1)“d”(5), 59.8(2),  
 59.8(2)“a” and “b,” Filed **ARC 3217B** ..... 3/17/04

#### **EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

- Driver education, 14.141(6), Notice **ARC 3256B** ..... 3/31/04
- Superintendent/AEA administrator endorsement, 14.142(3), 14.142(4), Filed **ARC 3255B** ..... 3/31/04
- Evaluator endorsement and license, ch 20 title and preamble,  
 20.1 to 20.9, 20.51 to 20.60, Filed **ARC 3257B** ..... 3/31/04

#### **EDUCATION DEPARTMENT[281]**

- Vocational rehabilitation services, 5.3(1), 5.16“3,” ch 56, Notice **ARC 3264B** ..... 3/31/04
- AEA media centers, rescind ch 70, Notice **ARC 3265B** ..... 3/31/04
- AEA educational services, rescind ch 71, Notice **ARC 3266B** ..... 3/31/04
- Student teaching experience, 79.13(2), Notice **ARC 3267B** ..... 3/31/04

#### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

- Tax exemption for property used to process waste wood products, 11.1, 11.2,  
 11.6(1), 11.6(3)“e” and “f,” Notice **ARC 3222B** ..... 3/17/04
- Commercial and industrial solid waste incineration (CISWI) units—emissions,  
 23.1(5)“c,” Filed **ARC 3221B** ..... 3/17/04
- Nonpublic water supply wells; well contractor certification, 49.1 to 49.4,  
 49.6(1) table, 49.6(3) to 49.6(5), 49.9(4), 49.10, 49.12 to 49.29, 82.1,  
 82.2(1), 82.2(3), 82.2(4), 82.3(1) to 82.3(3), 82.6, 82.7(1), 82.7(3), 82.7(4), 82.7(6),  
 82.8, 82.9, 82.10(4), 82.11(1), 82.11(3), 82.12(1), 82.12(2), 82.12(4), 82.13(1),  
 82.13(3), Notice **ARC 3223B** ..... 3/17/04

#### **HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

- Description of organization, ch 1, Notice **ARC 3270B** ..... 3/31/04

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

PUBLIC DEFENSE DEPARTMENT[601]"umbrella"

Wireless E911 emergency communications fund—costs eligible for recovery,

10.9(3)"b," Notice **ARC 3271B**, also Filed Emergency **ARC 3272B** ..... 3/31/04**HUMAN SERVICES DEPARTMENT[441]**

Hearing denied for appeal of patient treatment interventions outlined in patient handbook of

civil commitment unit for sexual offenders, 7.5(2)"a"(17), 7.5(2)"f," Notice **ARC 3274B** ..... 3/31/04

Medicaid eligibility extended for "expanded specified low-income Medicare beneficiaries,"

75.1(36), Filed Emergency **ARC 3248B** ..... 3/31/04

Maternal health centers—coverage to include local nonemergency medical transportation;

acceptable degrees for staff who deliver care coordination and psychosocial services,

78.25, 79.1(2), Filed **ARC 3249B** ..... 3/31/04

County and multicounty juvenile detention homes and juvenile shelter care homes,

105.1, 105.2(12)"f," 105.3(3)"g," "i" and "j," 105.5(5), 105.8(6), 105.9, 105.10(1),

105.18(2), 105.19, 105.19(1), 105.19(4), 105.21, Filed **ARC 3250B** ..... 3/31/04

Foster care—-independent living placement, ch 108 preamble, 108.1, 108.6(3),

108.10, 150.3(3)"j"(2), 150.3(5)"p"(2), 156.1, 156.8(2), 156.8(6), 156.12,

156.15, 156.20(1)"b"(1) and (2), 156.20(2), 185.64, ch 185 div V preamble,

185.86, 202.3(3)"c," 202.9, 202.11(2), Filed **ARC 3251B** ..... 3/31/04**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Health care facilities administration; birth centers, 50.1 to 50.3, 50.3(3), 50.6, 50.7,

50.8(2), 50.8(4), 50.8(5), 50.9, rescind ch 52, Filed **ARC 3254B** ..... 3/31/04

Long-term care facility admission procedures—determination of veterans' eligibility for benefits,

58.12(1)"l," 64.6, 65.10"10," Filed **ARC 3252B** ..... 3/31/04Nursing facilities—paid nutritional assistants, 58.24(9), Filed **ARC 3253B** ..... 3/31/04**LOTTERY AUTHORITY, IOWA[531]**

General operation of the lottery; purchasing; administrative procedures; waivers;

prizes; licensing; monitor vending machines; scratch tickets; pull-tabs;

computerized games, adopt chs 1 to 6, 11 to 14, 18 to 20;

rescind 705—chs 1 to 8, 11, 13, 14, Filed **ARC 3273B** ..... 3/31/04**MEDICAL EXAMINERS BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Physician supervision of a physician assistant, 21.4(1) to 21.4(4),

Filed Emergency **ARC 3232B** ..... 3/31/04**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Mooring of vessels on riparian property of the state of Iowa, 40.49, Notice **ARC 3259B** ..... 3/31/04Rental fees increase for renovated cabins, 61.4(1)"a," Notice **ARC 3260B** ..... 3/31/04

Protection for private landowners that implement conservation measures for endangered and

threatened species, 77.4(9) Notice **ARC 3258B** ..... 3/31/04**PHARMACY EXAMINERS BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmacy technicians—registration of licensed health care providers who assist in technical

functions of pharmacy practice, 3.3(1) to 3.3(4), 3.4, 3.29, Notice **ARC 3241B** ..... 3/31/04Confidentiality of patient information, 3.28(2), Filed **ARC 3238B** ..... 3/31/04

Substitution of brand name drug for generic drug—label information,

6.10(1)"g," Notice **ARC 2646B** Terminated **ARC 3237B** ..... 3/31/04

Substitution of brand name drug for generic drug—label information,

6.10(1)"g," Notice **ARC 3242B** ..... 3/31/04

Authorization by patient for release of confidential information—change in terminology;

pharmacist identification badge, 8.4(4), 8.15(1)"d," 8.16(2)"a,"

8.16(3)"d," Filed **ARC 3239B** ..... 3/31/04

Transmission of prescription drug order by authorized prescriber's agent;

Internet-based prescription drug orders, 8.19(2), 8.19(4), Notice **ARC 3243B** ..... 3/31/04

Controlled substances—reverse distributors added to list of entities required to register,

10.1, Notice **ARC 3244B** ..... 3/31/04Compounded drug product—label information, 20.10(6) to 20.10(8), Filed **ARC 3240B** ..... 3/31/04Computer-to-computer transmission of a prescription, 21.8, 21.8(3), Notice **ARC 3245B** ..... 3/31/04

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

- Dietetic examiners, 81.4(4)"b" and "c," 81.4(6), 81.4(7), 81.9,  
81.11 to 81.14, 84.1(5) to 84.1(9), Notice **ARC 3234B** ..... 3/31/04
- Massage therapy examiners, 130.4(2), 130.4(3), 130.6(3), 130.6(4),  
131.8, 131.11 to 131.13, 132.4(1)"c"(1)"2," 132.4(3), ch 134,  
135.1(6) to 135.1(11), Notice **ARC 3233B** ..... 3/31/04
- Podiatry examiners, 219.4(2), 219.4(3), 219.6(3), 219.6(4), 220.9,  
220.11 to 220.13, ch 224, 225.1(5) to 225.1(10), Notice **ARC 3214B** ..... 3/17/04
- Speech pathology and audiology examiners, 300.2 to 300.16,  
305.1(5) to 305.1(11), Filed **ARC 3230B** ..... 3/17/04

**PUBLIC HEALTH DEPARTMENT[641]**

- Radiation, amendments to chs 38 to 42, 45, 46, Filed **ARC 3268B** ..... 3/31/04
- Renovation, remodeling, and repainting—lead hazard notification process, 69.2, 69.3(2),  
69.4(2), 69.9, 69.9(2), 69.10, 69.11, Filed **ARC 3263B** ..... 3/31/04
- Lead-based paint activities, amendments to ch 70, Filed **ARC 3269B** ..... 3/31/04

**RECORDS COMMISSION[671]**

- Organization; state records manual; records series retention and disposition  
schedules process; temporary records; permanent records; development  
process for government information policies, standards and guidelines,  
chs 1 to 8, 14, Notice **ARC 3229B** ..... 3/17/04

**REGENTS BOARD[681]**

- Admission fees, 1.1, 1.2, 2.27(1), 2.27(6), Notice **ARC 3262B** ..... 3/31/04

**SECRETARY OF STATE[721]**

- Election emergency situations—voting after the statutory hour for closing the polls,  
21.1(12), Filed **ARC 3220B** ..... 3/17/04
- Polling place accessibility—definition of "off-street parking,"  
21.50(4), Filed **ARC 3218B** ..... 3/17/04
- Local sales and services tax elections—forms for petitions and motions,  
21.803(1)"a" and "b," 21.803(3), 21.803(3)"d," 21.803(5), Filed **ARC 3219B** ..... 3/17/04

**TRANSPORTATION DEPARTMENT[761]**

- Federal motor carrier safety regulations and hazardous materials regulations,  
520.1(1)"a" and "b," Filed **ARC 3235B** ..... 3/31/04
- Motor carrier regulations, 529.1, Notice **ARC 3211B** ..... 3/17/04
- Driver education; motorcycle rider education; motorized bicycle rider education,  
600.12 to 600.14; adopt ch 634; 635.2(2), 635.6, 635.7; adopt ch 636, Filed **ARC 3236B** ..... 3/31/04

**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

- Repeal of exemption for reorganization filing, 32.2(4), Notice **ARC 3225B** ..... 3/17/04

**VOLUNTEER SERVICE, IOWA COMMISSION ON[555]**

- Organization and operation of commission; appeals,  
1.1, 1.2, 5.1, Filed **ARC 3246B** ..... 3/31/04



## ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

**EDITOR'S NOTE: Terms ending April 30, 2007.**

Senator Michael Connolly  
3458 Daniels Street  
Dubuque, Iowa 52002

Senator John P. Kibbie  
P.O. Box 190  
Emmetsburg, Iowa 50536

Senator Mary Lundby  
P.O. Box 648  
Marion, Iowa 52302-0648

Senator Paul McKinley  
Route 5, Box 101H  
Chariton, Iowa 50049

Senator Donald Redfern  
415 Clay Street  
Cedar Falls, Iowa 50613

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244 400th Avenue  
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3533 Fenton Avenue  
Stratford, Iowa 50249

Representative Marcella R. Frevert  
P.O. Box 324  
Emmetsburg, Iowa 50536

Representative David Heaton  
510 East Washington  
Mt. Pleasant, Iowa 52641

Representative Geri Huser  
213 Seventh Street NW  
Altoona, Iowa 50009

Brian Gentry  
**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 11  
Des Moines, Iowa 50319

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
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#### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Parking, amend 11—100.1; adopt 11—ch 101; rescind 401—ch 4 IAB 3/31/04 <b>ARC 3247B</b>	Conference Room 04, Level A-South Hoover State Office Bldg. Des Moines, Iowa	April 20, 2004 10:30 a.m.
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#### EDUCATIONAL EXAMINERS BOARD[282]

Driver education teaching endorsement, 14.141(6) IAB 3/31/04 <b>ARC 3256B</b>	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	April 20, 2004 1 p.m.
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#### EDUCATION DEPARTMENT[281]

Vocational rehabilitation services division, 5.3(1), 5.16, ch 56 IAB 3/31/04 <b>ARC 3264B</b> (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 29, 2004 3 p.m.
	West High School 425 E. Ridgeway Ave. Waterloo, Iowa	April 29, 2004 3 p.m.
	Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 29, 2004 3 p.m.
	Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 29, 2004 3 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 29, 2004 3 p.m.
	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 29, 2004 3 p.m.
	Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	April 29, 2004 3 p.m.
AEA media centers, rescind ch 70 IAB 3/31/04 <b>ARC 3265B</b> (ICN Network)	Second Floor Grimes State Office Bldg. Des Moines, Iowa	April 22, 2004 12 noon to 1 p.m.
	Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 22, 2004 12 noon to 1 p.m.
	Great River AEA 3601 West Avenue Rd. Burlington, Iowa	April 22, 2004 12 noon to 1 p.m.

**EDUCATION DEPARTMENT[281] (Cont'd)**  
**(ICN Network)**

AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	April 22, 2004 12 noon to 1 p.m.
Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 22, 2004 12 noon to 1 p.m.
Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 22, 2004 12 noon to 1 p.m.
Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	April 22, 2004 12 noon to 1 p.m.
Keystone AEA 1400 Second St. NW Elkader, Iowa	April 22, 2004 12 noon to 1 p.m.
Room 204, Prairie Lakes AEA 330 Avenue M Fort Dodge, Iowa	April 22, 2004 12 noon to 1 p.m.
Heartland AEA 6500 Corporate Dr. Johnston, Iowa	April 22, 2004 12 noon to 1 p.m.
Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	April 22, 2004 12 noon to 1 p.m.
Room 103, AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	April 22, 2004 12 noon to 1 p.m.
Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 22, 2004 12 noon to 1 p.m.
AEA educational services, rescind ch 71 IAB 3/31/04 <b>ARC 3266B</b> <b>(ICN Network)</b>	Second Floor Grimes State Office Bldg. Des Moines, Iowa  April 22, 2004 12 noon to 1 p.m.
Louisa Room, Mississippi Bend AEA 729 21st St. Bettendorf, Iowa	April 22, 2004 12 noon to 1 p.m.
Great River AEA 3601 West Avenue Rd. Burlington, Iowa	April 22, 2004 12 noon to 1 p.m.
AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	April 22, 2004 12 noon to 1 p.m.
Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	April 22, 2004 12 noon to 1 p.m.

**EDUCATION DEPARTMENT[281] (Cont'd)**  
**(ICN Network)**

	Loess Hills AEA 24997 Hwy 92 Council Bluffs, Iowa	April 22, 2004 12 noon to 1 p.m.
	Turner Room, Green Valley AEA 1405 N. Lincoln Creston, Iowa	April 22, 2004 12 noon to 1 p.m.
	Keystone AEA 1400 Second St. NW Elkader, Iowa	April 22, 2004 12 noon to 1 p.m.
	Room 204, Prairie Lakes AEA 330 Avenue M Fort Dodge, Iowa	April 22, 2004 12 noon to 1 p.m.
	Heartland AEA 6500 Corporate Dr. Johnston, Iowa	April 22, 2004 12 noon to 1 p.m.
	Southern Prairie AEA 2814 N. Court St. Ottumwa, Iowa	April 22, 2004 12 noon to 1 p.m.
	Room 103, AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	April 22, 2004 12 noon to 1 p.m.
	Room 209A, Western Hills AEA 1520 Morningside Ave. Sioux City, Iowa	April 22, 2004 12 noon to 1 p.m.
Student teaching experience, 79.13(2) IAB 3/31/04 <b>ARC 3267B</b>	Conference Room 3 North Grimes State Office Bldg. Des Moines, Iowa	April 27, 2004 2 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Recycling property eligible for tax exemption, 11.1, 11.2, 11.6 IAB 3/17/04 <b>ARC 3222B</b>	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 8, 2004 10 a.m.
Animal feeding operations—health effects value and health effects standard for hydrogen sulfide, 20.2, adopt ch 32 IAB 3/31/04 <b>ARC 3261B</b> (See also <b>ARC 3092B</b> , IAB 1/7/04)	Muse-Norris Center NIACC 500 College Dr. Mason City, Iowa	April 1, 2004 6:30 to 8:30 p.m.
Nonpublic water supply wells; well contractor certification, amendments to chs 49, 82 IAB 3/17/04 <b>ARC 3223B</b>	Conference Rooms, Suite I 401 SW Seventh St. Des Moines, Iowa	April 6, 2004 1 p.m.
	Public Library 507 Poplar Atlantic, Iowa	April 7, 2004 1 p.m.
	Arrowhead AEA 824 Flindt Dr. Storm Lake, Iowa	April 8, 2004 8 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)**

Muse-Norris Conference Center 500 College Dr. Mason City, Iowa	April 13, 2004 2 p.m.
Pizza Ranch 1100 W. Main Manchester, Iowa	April 14, 2004 9 a.m.
Helen Wilson Gallery Public Library 120 E. Main Washington, Iowa	April 15, 2004 9 a.m.
City Hall 314 E. Maple Centerville, Iowa	April 16, 2004 9 a.m.

**HISTORICAL DIVISION[223]**

Description of organization, 1.1 to 1.9 IAB 3/31/04 <b>ARC 3270B</b>	Tone Board Room, Third Floor West Historical Bldg. 600 E. Locust St. Des Moines, Iowa	April 20, 2004 1 to 2 p.m.
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**HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DIVISION[605]**

Eligible costs for recovery by wireless service providers, 10.9(3) IAB 3/31/04 <b>ARC 3271B</b> (See also <b>ARC 3272B</b> herein)	Division Conference Room Hoover State Office Bldg. Des Moines, Iowa	April 27, 2004 1 p.m.
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**NATURAL RESOURCE COMMISSION[571]**

Mooring of vessels on riparian property of the state of Iowa, 40.49 IAB 3/31/04 <b>ARC 3259B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 20, 2004 9 a.m.
Cabin rental fees, 61.4(1) IAB 3/31/04 <b>ARC 3260B</b>	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 20, 2004 1:30 p.m.
Protection for private landowners that implement conservation measures for endangered and threatened species, 77.4(9) IAB 3/31/04 <b>ARC 3258B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	April 22, 2004 10 a.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Dietetic examiners, 81.4, 81.9, 81.11 to 81.14, 84.1 IAB 3/31/04 <b>ARC 3234B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 20, 2004 10 to 11 a.m.
Massage therapy examiners, 130.4, 130.6, 131.8, 131.11 to 131.13, 132.4, ch 134, 135.1 IAB 3/31/04 <b>ARC 3233B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 20, 2004 9 to 10 a.m.

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Podiatry examiners, 219.4, 219.6, 220.9, 220.11 to 220.13, ch 224, 225.1 IAB 3/17/04 <b>ARC 3214B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	April 6, 2004 9 to 10 a.m.
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**RECORDS COMMISSION[671]**

General, chs 1 to 8, 14 IAB 3/17/04 <b>ARC 3229B</b>	Tone Board Room, Third Floor West Historical Bldg. 600 E. Locust St. Des Moines, Iowa	April 7, 2004 10 to 11 a.m.
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**REGENTS BOARD[681]**

Admission fees for regents universities, 1.1, 1.2, 2.27 IAB 3/31/04 <b>ARC 3262B</b>	11260 Aurora Ave. Urbandale, Iowa	April 20, 2004 3 p.m.
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**TRANSPORTATION DEPARTMENT[761]**

For-hire interstate motor carrier authority, 529.1 IAB 3/17/04 <b>ARC 3211B</b>	DOT Conference Room, Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	April 8, 2004 10 a.m. (If requested)
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural Development Authority[25]

Soil Conservation Division[27]

ATTORNEY GENERAL[61]

AUDITOR OF STATE[81]

BEEF INDUSTRY COUNCIL, IOWA[101]

BLIND, DEPARTMENT FOR THE[111]

CAPITAL INVESTMENT BOARD, IOWA[123]

CITIZENS’ AIDE[141]

CIVIL RIGHTS COMMISSION[161]

COMMERCE DEPARTMENT[181]

Alcoholic Beverages Division[185]

Banking Division[187]

Credit Union Division[189]

Insurance Division[191]

Professional Licensing and Regulation Division[193]

Accountancy Examining Board[193A]

Architectural Examining Board[193B]

Engineering and Land Surveying Examining Board[193C]

Landscape Architectural Examining Board[193D]

Real Estate Commission[193E]

Real Estate Appraiser Examining Board[193F]

Savings and Loan Division[197]

Utilities Division[199]

CORRECTIONS DEPARTMENT[201]

Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]

Arts Division[222]

Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

City Development Board[263]

Grow Iowa Values Board[264]

Iowa Finance Authority[265]

EDUCATION DEPARTMENT[281]

Educational Examiners Board[282]

College Student Aid Commission[283]

Higher Education Loan Authority[284]

Iowa Advance Funding Authority[285]

Libraries and Information Services Division[286]

Public Broadcasting Division[288]

School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]

ELDER AFFAIRS DEPARTMENT[321]

EMPOWERMENT BOARD, IOWA[349]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

EXECUTIVE COUNCIL[361]

FAIR BOARD[371]

GENERAL SERVICES DEPARTMENT[401]

HUMAN INVESTMENT COUNCIL[417]

HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]

Criminal and Juvenile Justice Planning Division[428]

Deaf Services Division[429]

Persons With Disabilities Division[431]

Latino Affairs Division[433]

Status of African-Americans, Division on the[434]

Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]  
INFORMATION TECHNOLOGY DEPARTMENT[471]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Substance Abuse Commission[643]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
        Workforce Development Center Administration Division[877]



## ARC 3247B

ADMINISTRATIVE SERVICES  
DEPARTMENT[11]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services proposes to rescind 401—Chapter 4, “Parking,” and to adopt 11—Chapter 101, “Parking,” and to amend 11—Chapter 100, “Capitol Complex Operations,” Iowa Administrative Code.

The purpose of this proposed rule making is to update rules of the former Department of General Services regarding parking on the capitol complex and adopt the new chapter under the Department of Administrative Services, pursuant to statutory changes made by the 80th General Assembly in Iowa Code Supplement chapter 8A. Differences between the old and new chapters include:

1. Clarification of the purpose of the chapter and moving definitions to a separate rule.
2. Revising the definition of “capitol complex” to match that used in 11—Chapter 100, “Capitol Complex Operations.”
3. Clarification of designation and assignment of employee and visitor parking areas and adding reference to the capitol complex parking map on the Department’s Web site.
4. Replacing references to Capitol Police with references to peace officers assigned to the Iowa State Patrol District 16.
5. Adding definitions of “capitol complex parking area,” “delinquent,” “legislative parking area,” “overnight parking,” “reserved parking” and “visitor parking.”
6. Renaming parking coordinators as access coordinators.
7. Replacing quotations of statutory definitions of “persons with a disability” and “persons with a disability parking permit” with references to Iowa Code chapter 321.
8. Revising and clarifying the definitions of “employee,” “overflow lot,” “parking decal,” and “visitor.”
9. Revising the definition of “habitual violator” to include the ability to end the designation if the vehicle owner or operator does not continue to receive tickets by changing the definition from receipt of six tickets in any given 6-month period to receipt of six tickets in the past 12 months.
10. Adding the provision that an access card will only be issued to an employee by name for access granted to that employee. For security reasons, generic or spare access cards shall not be issued.
11. Revising the rule on employee parking to clarify policy on obtaining, displaying, replacing and removing parking decals, and obtaining and replacing access cards.
12. Requiring vehicles to be moved to designated overnight parking areas only during conditions of snow or ice or when maintenance work is required.
13. Clarification of provisions for temporary parking and prohibited parking.

14. Moving appeal-related issues into a separate rule and deleting references to appearance bonds and reimbursement of fees.

15. Raising the base parking fine from \$5 to \$10.

16. Adding a penalty for late payment of parking citations. If the parking citation remains unpaid after 30 days, the fine increases from \$10 to \$20.

17. Eliminating the rule on ride sharing. Ride sharing is one of a number of reasons for which reserved parking spaces may be assigned.

The waiver process set forth in 11—Chapter 9 applies to any request for waiver of these rules.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on April 20, 2004. Interested persons may submit written, oral or electronic comments by contacting Carol Stratemeyer, Department of Administrative Services, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0104; telephone (515)281-6134; fax (515)281-6140; E-mail [Carol.Stratemeyer@iowa.gov](mailto:Carol.Stratemeyer@iowa.gov).

There will be a public hearing on April 20, 2004, beginning at 10:30 a.m. in the Administrative Services Conference Room 04, Hoover State Office Building, Level A-South, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. Persons with special needs should contact the Department of Administrative Services prior to the hearing if accommodations are needed.

These amendments are intended to implement Iowa Code Supplement sections 8A.322 and 8A.323.

The following amendments are proposed.

ITEM 1. Rescind **401—Chapter 4.**

ITEM 2. Amend **11—100.1(80GA, HF534)**, definition of “capitol complex,” as follows:

“Capitol complex” means an area within the city of Des Moines *within in* which the Iowa state capitol building is located. This area includes the state capitol building and all real property and appurtenances thereto owned by the state of Iowa within an area bounded on the north by Interstate Highway 235, on the east by East 14th Street, on the south by the northernmost railroad tracks *south of Court Avenue* and on the west by East 6th Street.

ITEM 3. Adopt the following **new** chapter:

CHAPTER 101  
PARKING**11—101.1(8A) Purpose.**

**101.1(1)** The purpose of these rules is to provide citizens with the most convenient access to Iowa state offices on the capitol complex, to provide state employees a parking space within a reasonable distance of their offices, to remove the hazards inherent in unregulated parking, to define prohibited parking, and to set forth fines and the means of enforcement.

**101.1(2)** Parking spaces or lots will be assigned to three classes of drivers: (1) visitors and employees with disabilities, (2) other visitors, and (3) other employees.

**101.1(3)** Capitol complex parking area designations may be found on the department’s Web site at [http://das.gse.iowa.gov/gen\\_info/parking3.pdf](http://das.gse.iowa.gov/gen_info/parking3.pdf).

**11—101.2(8A) Definitions.** The following definitions shall apply to this chapter.

“Access coordinator” means an employee, designated within each agency, with the assigned duties of disseminating

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

information on parking and building access and requesting parking decals and access cards from the department of administrative services, the department of public safety, and the house of representatives or the senate, as appropriate, for employee parking lot assignment and building access.

“Capitol complex” means an area within the city of Des Moines in which the Iowa state capitol building is located. This area includes the state capitol building and all real property and appurtenances thereto owned by the state of Iowa within an area bounded on the north by Interstate Highway 235, on the east by East 14th Street, on the south by the northernmost railroad tracks south of Court Avenue and on the west by East 6th Street.

“Capitol complex parking area” means a parking lot or parking structure for employees or visitors that is within the boundaries of the capitol complex and that is under the control of the executive branch of state government.

“Controlled lot” means a parking area for which access or usage is designated by any of the following: parking gates, vehicle decals, signs, symbols, or markings.

“Delinquent” means a parking fine that has not been paid within 30 days of issuance. If the owner or operator of the vehicle contests the parking citation by filing a written request for hearing within 10 days of the issuance of the citation and the citation is upheld, an unpaid fine shall become delinquent 10 days after issuance of the final decision or 31 days after issuance of the ticket, whichever is later.

“Department” means the department of administrative services.

“Director” means the director of the department of administrative services or the director’s designee.

“Employee” means any person employed by the state of Iowa and regularly assigned to work on the capitol complex, including legislators, judges, temporary workers and persons who are service contractors or private contractors with the state and their employees who regularly work within the capitol complex. “Employee” shall also mean a full-time appointee of a board, commission, council, or similar group that regularly meets or has offices at the capitol complex.

“Habitual violator” means any owner or operator of a vehicle who has received six or more separate and distinct parking citations in the past 12 months regardless of whether payment for the citations is made in a timely manner.

“Legislative parking area” means a parking lot within the boundaries of the capitol complex that is under the control of the legislative branch of state government.

“Operator” means any person who is in actual physical control of a vehicle.

“Overflow lot” means a lot designated by the department of administrative services for both employees and visitors.

“Overnight parking” means parking on the capitol complex between 11 p.m. and 6 a.m.

“Overtime parking” means parking in a space or parking area longer than the posted time limit.

“Owner” means a person who is named on the legal title of a vehicle as the owner or, in the case of a vehicle without a title certificate, the person who is lawfully seized of the vehicle.

“Parking decal” means a device, such as but not limited to a sticker, card or tag, used to identify a state employee’s vehicle, which is distributed by the department of administrative services or the legislative branch upon the request of the access coordinator and used for the purpose of identifying state employees’ vehicles in capitol complex and legislative parking areas. Such a device includes:

1. A decal issued by the department of administrative services,

2. A dashboard placard issued for the current year by the chief clerk of the house of representatives or the secretary of the senate for legislative employees, or

3. A hangtag distributed by the department of administrative services for use in certain reserved parking areas while an employee uses a state vehicle.

“Peace officer” means a person defined as a peace officer in Iowa Code section 801.4, who is assigned to the Iowa state patrol district 16 on either a permanent or temporary basis.

“Persons with disabilities parking permit” means a permit as defined in Iowa Code section 321L.2 that bears the international symbol of accessibility issued by the department of transportation or by the corresponding agency of another state which allows the holder to park in a persons with disabilities parking space.

“Persons with disabilities parking sign” means a sign that bears the international symbol of accessibility and that meets the requirements of Iowa Code section 321L.6.

“Persons with disabilities parking space” means a parking space, including the access aisle, that is designated for use only by motor vehicles displaying a persons with disabilities parking permit and that meets the requirements of Iowa Code sections 321L.5 and 321L.6 and 661—Chapter 18.

“Person with a disability” means a person who has a disability that limits or impairs the person’s ability to walk as defined in Iowa Code section 321L.1.

“Reserved parking” means a parking area designated by a “reserved” parking sign and assigned by the director to a specific agency, vehicle or individual.

“Vehicle” means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway. “Vehicle” does not include any device moved by human power.

“Visitor” means a member of the public at the capitol complex who is not included in the definition of employee.

### **11—101.3(8A) Parking space assignments.**

**101.3(1)** Each parking space on the capitol complex will be assigned, on an individual or lot basis, by the director, except legislative parking areas which shall be assigned by the chief clerk of the house of representatives or the secretary of the senate. Parking assignments may be dependent upon factors including, but not limited to, office location, type of vehicle (such as an oversized vehicle or a motorcycle), or the need to park after normal working hours.

**101.3(2)** The assignment of parking spaces will be indicated and designated by traffic control devices including but not limited to signs, instructions, lines or symbols painted on curbs or on parking surfaces, or by curbs, barricades, blocks, and lights. A raised or missing parking control gate at the entrance to a parking area otherwise restricted does not indicate open parking.

### **11—101.4(8A) Parking for persons with disabilities.**

**101.4(1)** Spaces designated for persons with disabilities in visitor parking areas, unless specifically posted for employee parking, shall be used only by visitors with disabilities, or by persons transporting visitors with disabilities. Such visitors are required to display a persons with disabilities parking permit in or on their vehicle pursuant to Iowa Code section 321L.4.

**101.4(2)** Spaces designated for employees with disabilities shall be used only by employees with disabilities, or persons who are transporting employees with disabilities, who display a persons with disabilities parking permit in or on

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

their vehicle pursuant to Iowa Code section 321L.4 and a capitol complex parking decal.

**11—101.5(8A) Visitor parking.** Visitors to the capitol complex shall park in areas designated for visitor parking, in overflow lots, or on the street where parking is not prohibited. A visitor shall not park in an employee lot unless the lot is specifically posted for open parking.

**11—101.6(8A) Deliveries.** Most buildings on the capitol complex have delivery entrances with limited space for parking while loading and unloading a vehicle. Delivery vehicles and employees needing to load or unload their vehicles near the building shall use these entrances. Each of the restrictions and regulations contained in these rules, all traffic control devices and state laws shall apply to delivery vehicles.

**11—101.7(8A) Employee parking.** Employees shall park only in assigned capitol complex employee parking areas and not in areas designated solely for visitors.

**101.7(1) Access card issuance.** The director or Iowa state patrol district 16 will issue to each employee an access card, if needed, for access to the employee's assigned lot. An access card shall be assigned to an employee by name for access granted to that employee. Generic or spare access cards shall not be issued.

**101.7(2) Decal issuance.**

a. All employees who park any vehicle, other than a state vehicle, on the capitol complex shall report the vehicle to the department of administrative services through their access coordinator, and obtain a parking decal(s) and space or lot assignment in a capitol complex parking area within five days after beginning employment on the capitol complex or obtaining license plates for said vehicle, whichever is later. The parking decal will be coded and shall be used only in the assigned space or lot(s).

b. Legislative employees must register with the chief clerk of the house of representatives or the secretary of the senate for a placard and a parking space or lot assignment.

**101.7(3) Failure to obtain a parking decal.** An employee who fails to report a vehicle pursuant to subrule 101.7(2) or fails to obtain a parking decal and a space or lot assignment shall not park in capitol complex parking areas.

**101.7(4) Display of decals.**

a. Parking decals with adhesive backing must be permanently affixed to the lower corner of the vehicle's windshield on the driver's side within 48 hours of issuance. The use of tape or adhesive other than that found on the decal to affix the parking decal is prohibited.

b. Dash placards shall be placed on the vehicle's dashboard so they are visible through the windshield on the driver's side.

c. Hangtags shall be hung from the vehicle's rearview mirror.

**101.7(5) Replacement of decals.**

a. Lost decals. A lost parking decal shall be replaced by the employee's contacting the access coordinator and making application to the department of administrative services or by notifying the chief clerk of the house of representatives or the secretary of the senate, as appropriate.

b. Damaged decals. Parking decals that become damaged or unidentifiable or that are affixed to a vehicle being reassigned to a parking area that requires a different parking decal shall be replaced by the employee's contacting the access coordinator and making application to the department, or legislative branch, as appropriate.

**101.7(6) Removal of decals.** A parking decal affixed to a vehicle that is no longer being driven to the capitol complex

by the employee to whom the parking decal was issued shall be removed. When the individual to whom the parking decal was issued is no longer an employee, the parking decal shall be removed from the vehicle.

**101.7(7) Replacement access cards.**

a. Replacement fee. If an access card is lost or damaged to the extent that it is no longer operational, it shall be replaced upon payment of the fee prescribed by the director. The replacement fee shall be based on the costs of replacing the card.

b. No replacement fee. The first card issued to an individual and a card replacing one that failed due to normal usage will be issued free of charge.

**11—101.8(8A) Temporary parking.**

**101.8(1)** A request to park temporarily for the purpose of loading or unloading a vehicle in an area where parking is prohibited shall be directed to the Iowa state patrol district 16 at (515)281-5608. The requester shall provide the driver's name, license plate number of the vehicle and where it is parked.

**101.8(2)** An individual who is a visitor on the capitol complex and who drives a vehicle with a parking decal assigned to a specific employee lot may park in a visitor's space provided written permission is granted by the Iowa state patrol district 16. The driver shall immediately telephone the Iowa state patrol district 16 at (515)281-5608 and give the driver's name, license plate number of the vehicle and where it is parked. The driver will receive instructions on obtaining written permission.

**101.8(3)** An employee who drives a vehicle without a parking decal must obtain written permission from Iowa state patrol district 16 to park on the capitol complex. The driver shall immediately telephone Iowa state patrol district 16 at (515)281-5608 and give the driver's name, license plate number of the vehicle and where it is parked. The driver will receive instructions on obtaining written permission.

**101.8(4)** Temporary parking permission granted under subrule 101.8(1) 101.8(2), or 101.8(3) shall not constitute a waiver of the rules in this chapter.

**11—101.9(8A) Prohibited parking.** Failure to locate a space where parking is permitted in a designated capitol complex parking area does not entitle the operator to park in a manner prohibited by this chapter or state law.

**101.9(1)** Vehicles shall not be parked in a manner that violates any of the rules in this chapter or state law.

**101.9(2)** Vehicles shall not be parked in a manner that causes:

a. More than one space to be occupied by a single vehicle.

b. A street, parking lot lane or traffic lane within a capitol complex parking lot to be blocked.

c. A building entrance to be blocked or obstructed.

d. Access to fire hydrants, emergency equipment or vehicles to be blocked or obstructed.

e. Obstruction of the egress of another vehicle.

f. Pedestrian walkways or sidewalks to be obstructed or blocked.

g. Occupation of an area where vehicle parking is prohibited.

h. Overtime parking.

**101.9(3)** A vehicle shall not be parked in a space designated for use by visitors with disabilities unless the driver is a visitor with disabilities or is transporting a visitor with disabilities. A vehicle shall not be parked in a space designated for use by employees with disabilities unless the driver is an

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

employee with disabilities or is transporting an employee with disabilities.

**101.9(4)** A vehicle shall not be parked in a space or lot unless that space or lot is designated for use by or assigned to the driver. However, spaces or lots that are not otherwise designated (by sign or symbol that indicates a restricted or continuous reserved status, such as legislator, emergency or delivery vehicle, or persons with disabilities) may be used between 6 p.m. and 6 a.m. and during weekends and state government holidays, except as otherwise specified by this rule.

**101.9(5)** Vehicles shall not be parked on curbs, on grass or in any area not intended for vehicle parking.

**101.9(6)** Delivery vehicles shall not be parked in a manner or for a period of time that does not comply with the restrictions established for those vehicles by the director or with a traffic control device.

**101.9(7)** A vehicle with a delinquent parking ticket shall not be allowed to park on the capitol complex.

**101.9(8)** Vehicles of habitual violators shall not be allowed to park on the capitol complex.

**101.9(9)** If any vehicle is found stopped, standing or parked in any manner in violation of the provisions of these rules and the identity of the operator cannot be determined, the owner or operator or corporation in whose name the vehicle is registered shall be held responsible for the violation.

**101.9(10)** Vehicles shall not be parked on the capitol complex overnight in parking areas not specifically designated for overnight parking when there are conditions of snow or ice or when the department closes an area for maintenance.

**11—101.10(8A) Waiver.** As the purpose of these rules is to facilitate the system of parking, encourage compliance and reduce conflict, any rule contained herein, unless otherwise provided by law, may be suspended or waived by the director to aid law enforcement, to prevent undue hardship in any particular instance or to prevent unnecessary conflict or injustice. All suspensions and waivers shall be in writing. The director may change space and lot designations, excluding those in legislative parking areas, temporarily or permanently, to maintain appropriate availability of parking on the capitol complex. Waiver of these rules shall be requested in accordance with 11—Chapter 9.

#### **11—101.11(8A) Enforcement.**

**101.11(1)** Peace officers assigned to the Iowa state patrol district 16 shall be primarily responsible for the enforcement of these rules.

**101.11(2)** The Iowa state patrol peace officers may in their discretion enforce these rules by:

- a. Issuing oral or written orders or directions to an owner or operator.
- b. Issuing a citation.
- c. Removing a vehicle or causing a vehicle to be removed in accordance with subrule 101.11(6).

**101.11(3)** The director may rescind the privilege to park on the capitol complex for any vehicle for which there is a delinquent parking ticket.

**101.11(4)** The director may rescind the privilege to park on the capitol complex for any vehicle of a habitual violator.

**101.11(5)** Removal of vehicles.

a. A vehicle may be removed for nonpayment of all parking fines whether or not the vehicle is illegally parked at that time, when there are delinquent parking fines for the vehicle or registration plates.

b. A peace officer shall have the right to remove from the capitol complex the vehicle of a habitual violator.

**101.11(6)** If a peace officer determines that a vehicle is to be removed, the peace officer shall have the vehicle removed by the use of state equipment or by a private towing firm or contractor.

**101.11(7)** The director may contract with an individual or firm to provide services for removing (towing) vehicles found in violation of these rules or state law and to store such vehicles until claimed by the owner or disposed of as abandoned vehicles.

**101.11(8)** A peace officer, upon impounding a vehicle, shall give notice in person, by telephone or by ordinary mail to the owner of the vehicle. The notice shall state the specific violation or other reason for which the vehicle was impounded, its location and the fee for the removal, storage and notice. The towing firm or individual shall release the vehicle to the owner upon notification by the department of administrative services that the owner or operator has paid all outstanding citations and after the service fee has been paid to the towing firm or individual. The amount of this fee will be determined by the agreement between the director and the individual or firm.

**101.11(9)** If an owner or operator returns to the vehicle prior to its removal, but after the towing contractor has been summoned, the peace officer may require that the vehicle remain on the capitol complex until the towing contractor arrives. Upon the towing contractor's arrival, the vehicle may be allowed to be moved after the operator pays the towing contractor the cost of the service call and after the department of administrative services notifies the peace officer that all delinquent parking fines have been paid. The towing firm or individual shall issue a receipt for payment of the cost of the service call to the owner or operator.

**101.11(10)** An operator who enters a parking lot in a manner not consistent with usual parking lot access procedures shall be subject to a parking citation and possible charges for damages. Access to parking lots inconsistent with usual access procedures includes, but is not limited to: closely following another vehicle into a parking lot in a manner that prevents the gate from closing between vehicles; opening a gate for unauthorized persons with another operator's access card; driving over the curb or around the gate; driving through a gate that is not fully raised, or lifting a parking gate by hand without authorization.

**101.11(11)** In addition to any enforcement action taken under this rule, charges may be filed under other criminal statutes if appropriate.

#### **11—101.12(8A) Fines.**

**101.12(1)** A fine of \$10 is hereby established for the violation of any of these rules, except those pertaining to persons with disabilities parking.

**101.12(2)** The parking fine shall be increased by \$10 if the fine is not paid within 30 days of the date upon which the violation occurred.

**101.12(3)** Improper use of a persons with disabilities parking space is subject to a fine pursuant to Iowa Code section 321L.4(2).

**101.12(4)** A violator may be notified of a violation by being served with a parking violation ticket which:

- a. May be served personally to the operator or placed upon the vehicle that is parked in violation of a rule.
- b. Advises the operator of the rule violated.
- c. Instructs the operator that the operator is required to pay \$10 for each violation charged to the department of administrative services within 10 days by submitting the ticket or the ticket number and payment in cash or a check or money order payable to the Department of Administrative Services,

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Customer Service Center, Hoover State Office Building, Level A, Des Moines, Iowa 50319.

d. Warns the operator that:

(1) The director may rescind the parking privilege of any vehicle or owner or operator that has a delinquent parking ticket.

(2) The director may rescind the parking privilege of any owner or operator meeting the definition of "habitual violator."

When the parking privilege is rescinded, the vehicle shall not be allowed to be parked in any capitol complex parking area until all fines are paid or the owner or operator no longer meets the definition of "habitual violator." Peace officers may tow any vehicle parked on the capitol complex for which parking privileges have been rescinded.

e. Warns the violator that failure to pay the fine may result in the director's proceeding against the violator in an Iowa district court.

f. Advises the operator of how to obtain a hearing on the charges.

g. Warns that the fine for each separate violation shall be increased by \$10 if the parking ticket is not paid within 30 days of the date upon which the violation occurred.

**11—101.13(8A) Appeals.** Appeals regarding enforcement of parking rules shall be pursuant to 11—Chapter 7, Contested Cases.

If the owner or operator wishes to contest a parking citation, the fees paid because of the removal or attempted removal of the vehicle, or any other action arising from these rules, the owner or operator shall notify the director in writing within ten days of the action. Upon such notification, the owner or operator will be provided with written instructions that describe the procedure the director will use to conduct a hearing to consider the owner's or operator's evidence and arguments.

These rules are intended to implement Iowa Code Supplement sections 8A.322 and 8A.323.

**ARC 3256B****EDUCATIONAL EXAMINERS  
BOARD[282]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

The proposed amendment regarding the driver education teaching endorsement reduces the number of hours for the content requirement and, therefore, eliminates the need for institutions to add unnecessary and possibly unrelated courses in an effort to satisfy the required 15 hours. The amendment also includes language regarding drug and alcohol abuse.

A waiver provision is not included. The Board has

adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Tuesday, April 20, 2004, at 1 p.m. in Room 3 North, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, April 23, 2004. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address, or sent by E-mail to [anne.kruse@ed.state.ia.us](mailto:anne.kruse@ed.state.ia.us), or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 14.141(6) as follows:

**14.141(6) Driver and safety education.** 7-12. Completion of 15 9 semester hours in driver and safety education to include coursework in accident prevention *that includes drug and alcohol abuse;* vehicle safety; and behind-the-wheel driving.

**ARC 3264B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 5, "Public Records and Fair Information Practices," and to rescind Chapter 56, "Vocational Rehabilitation Division," and adopt new Chapter 56, "Vocational Rehabilitation Services Division," Iowa Administrative Code.

The proposed amendments incorporate policies and procedures from the Vocational Rehabilitation Services Division's service manual and update existing rules following the annual review of this chapter by the Division. Also, the Division agreed to move written guidelines into rules following a court settlement.

An agencywide waiver provision is provided in 281—Chapter 4.

Any interested party may make written suggestions or comments on the proposed amendments on or before April 29, 2004. Written materials should be directed to Ralph

## EDUCATION DEPARTMENT[281](cont'd)

Childers, Policy and Workforce Initiatives Coordinator, Bureau of Administration Services, Department of Education, Jessie Parker State Office Building, 510 East 12th Street, Des Moines, Iowa 50319.

Persons may also present their views orally or in writing at the public hearing to be held at 3 p.m. on April 29, 2004, over the Iowa Communications Network (ICN). At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The ICN sites are as follows:

Department of Education (origination site)	Western Hills Area Education Agency 12
Grimes State Office Building Second Floor Des Moines	1520 Morningside Avenue Rm. 209A Sioux City
West High School 425 E. Ridgeway Ave. Waterloo	Loess Hills Area Education Agency 13 24997 Highway 92 Council Bluffs
Grant Wood Area Education Agency 10 4401 6th Street SW Revere Room Cedar Rapids	Keystone Area Education Agency 1 2310 Chaney Road Rm. 2 Dubuque
Mississippi Bend Area Education Agency 9 729 21st Street Louisa Room Bettendorf	

Any person who intends to attend a public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the Vocational Rehabilitation Services Division at (515)281-4151 no later than April 15, 2004.

These amendments are intended to implement Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, and the federal Social Security Act (42 U.S.C. Section 301, et seq.).

The following amendments are proposed.

ITEM 1. Amend subrule 5.3(1) as follows:

**5.3(1)** Location of record. ~~In lieu of the words “(insert agency head)”, insert “office where the record is kept”. In lieu of the words “(insert agency name and address)”, insert “Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146”.~~ *All records of the department of education are located at the Grimes State Office Building, Des Moines, Iowa 50319-0146, with the exception of records belonging to the division of vocational rehabilitation services, which are located at the Jessie Parker State Office Building, 510 East 12th Street, Des Moines, Iowa 50319.*

ITEM 2. Amend rule **281—5.16(256)**, numbered paragraph “3,” as follows:

3. Govern the maintenance or disclosure of, notification of or access to, records in the possession of the agency which are governed by the rules of another agency. ~~This chapter applies only to the records of the department of education, excluding the records of the department’s division of vocational rehabilitation which are found at 281—56.23(22), and covers records of the vocational education council established in Iowa Code chapter 258. This chapter applies to all records of the department of education. Additional rules regarding records of the department’s division of vocational rehabilitation services are also set forth in 281—Chapter 56, division VIII.~~ This chapter does not apply to the records of the following agencies under the department’s “umbrella” that have their

own rule-making authority: college aid commission, Iowa advance funding authority, ~~professional teaching practices commission~~ *educational examiners board*, and the school budget review committee.

ITEM 3. Rescind 281—Chapter 56 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 56 VOCATIONAL REHABILITATION SERVICES DIVISION

### DIVISION I SCOPE AND GENERAL PRINCIPLES

**281—56.1(259) Responsibility of division.** The division of vocational rehabilitation services is responsible for providing services leading to employment for eligible Iowans with disabilities in accordance with Iowa Code chapter 259, the federal Rehabilitation Act of 1973 as amended, the federal Social Security Act (42 U.S.C. Section 301, et seq.), and the corresponding federal regulations therefor.

**281—56.2(259) Nondiscrimination.** The division shall not discriminate on the basis of race, creed, color, sex, national origin, religion, duration of residency, or disability in the determination of a person’s eligibility for rehabilitation services and in the provision of necessary rehabilitation services.

### DIVISION II DEFINITIONS

**281—56.3(259) Definitions.** For the purpose of this chapter, the indicated terms are defined as follows:

“Act” means the federal Rehabilitation Act of 1973, as amended and codified at 29 U.S.C. Section 701, et seq.

“Aggregate data” means information about one or more aspects of division clients, or from some specific subgroup of division clients, but from which personally identifiable information on any individual cannot be discerned.

“Assistive technology device” means any item, piece of equipment or product system, whether acquired commercially or off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of an individual with a disability.

“Assistive technology service” means any service that directly assists an individual with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology services include:

1. Evaluating the needs of an individual with a disability, including a functional evaluation of the individual in the individual’s customary environment;

2. Aiding an individual with a disability in purchasing, leasing, or otherwise providing for the acquisition of an assistive technology device;

3. Selecting, designing, fitting, customizing, adapting, applying, maintaining, repairing, or replacing assistive technology devices;

4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

5. Providing training or technical assistance for an individual with a disability or, if appropriate, the family members, guardians, advocates, or authorized representatives of the individual; and

6. Providing training or technical assistance for professionals (including individuals providing education and reha-

## EDUCATION DEPARTMENT[281](cont'd)

bilitation services), employers, or others who provide services to, employ, or are otherwise substantially involved in the major life functions of individuals with disabilities, to the extent that training or technical assistance is necessary to the achievement of an employment outcome by an individual with disabilities.

“Case record” means the file of personally identifiable information on an individual collected to carry out the purposes of the division as defined in the Act and the Social Security Act. This information remains a part of the case record and is subject to these rules even when temporarily physically removed, either in whole or in part, from the file folder in which it is normally kept.

“Client” means an eligible individual receiving benefits or services from any part of the division and shall include former clients of the division whose files or records are retained by the division.

“Department” means the department of education.

“Designated representative” means anyone the client designates to represent the client’s interests before and within the division. The term does not necessarily mean a legal representative. The designated representative may be a parent, guardian, friend, attorney, or other designated person.

“Division” means the division of vocational rehabilitation services of the department of education.

“Employment outcome” means, with respect to an individual, entering or retaining full-time or, if appropriate, part-time competitive employment in the integrated labor market; supported employment; or any other type of employment, including self-employment, telecommuting, or business ownership, that is consistent with an individual’s strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

“Home modification” means the alteration of an already existing living unit to make it usable or more usable by a person with a disability.

“Impartial hearing officer” or “IHO” means a person who is not an employee of the division; is not a member of the state rehabilitation advisory council; has not been involved in previous decisions regarding the applicant or client; has knowledge of the delivery of vocational rehabilitation services, the state plan and the federal and state rules and regulations governing the provision of such services; has received training in the performance of the duties of a hearing officer; and has no personal or financial interest that would be in conflict with the person’s objectivity.

“Independent living services” or “IL services” means those items and services provided to individuals who have a significant physical, mental, or cognitive impairment and whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited, and for whom the delivery of IL services will improve their ability to function, continue functioning, or move toward functioning independently in the family or community or to continue in employment.

“Individual plan for employment” or “IPE” means a plan that specifies the services needed by an eligible individual and the involvement of other payers and must include the expected employment outcome and the timeline for achievement of the expected employment outcome.

“Individual with a most significant disability” means an individual who is seriously limited in three or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or cognitive/motor skills) in terms of an employment outcome.

“Individual with a significant disability” means an individual who has a significant physical or mental impairment that seriously limits one or more functional capacities (mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or cognitive/motor skills) in terms of an employment outcome or who is a recipient of SSD/SSI.

“Integrated work setting” means job sites where most of the client’s coworkers are not disabled and the client interacts on a regular basis, in the performance of job duties, with employees who are not disabled; or if the client is part of a distinct work group of only individuals with disabilities, the work group consists of no more than eight individuals; or the client has no coworkers; or if the only coworkers are part of a work group of eight or fewer individuals with disabilities, the client has regular contact with nondisabled individuals, other than the persons providing support service, including members of the general public.

“Maintenance” means monetary support provided to a client for expenses, such as food, shelter, and clothing, that are in excess of the normal expenses of the client and that are necessitated by the client’s participation in the program.

“Mediation” means the act or process of using an independent third party to act as a mediator, intermediary, or conciliator to assist persons or parties in settling differences or disputes prior to pursuing formal administrative or other legal remedies.

“Ongoing support services” means services that are needed to support and maintain individuals with the most significant disabilities in supported employment. Such services shall be specified in the IPE and include, at a minimum, twice-monthly monitoring at the work site to assess employment stability, unless it is determined in the IPE that off-site monitoring is more appropriate.

“Physical or mental impairment” means:

1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, or endocrine; or

2. Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, or specific learning disabilities.

“Physical or mental restoration services” means:

1. Corrective surgery or therapeutic treatment that is likely, within a reasonable period of time, to correct or modify substantially a stable or slowly progressive physical or mental impairment that constitutes a substantial impediment to employment;

2. Diagnosis of and treatment for mental or emotional disorders by qualified personnel in accordance with state licensure laws;

3. Dentistry;

4. Nursing services;

5. Necessary hospitalization (either inpatient or outpatient) in connection with surgery or treatment and clinical services;

6. Drugs and supplies;

7. Prosthetic and orthotic devices;

8. Eyeglasses and visual services, including visual training, and the examination and services necessary for the prescription and provision of eyeglasses, contact lenses, microscopic lenses, telescopic lenses, and other special visual aids prescribed by personnel that are qualified in accordance with state licensure laws;

9. Podiatry;

## EDUCATION DEPARTMENT[281](cont'd)

10. Physical therapy;
11. Occupational therapy;
12. Speech and hearing therapy;
13. Mental health services;

14. Treatment of either acute or chronic medical complications and emergencies that are associated with or arise out of the provision of physical and mental restoration services or that are inherent in the condition under treatment;

15. Special services for the treatment of individuals with end-stage renal disease, including transplantation, dialysis, artificial kidneys, and supplies; and

16. Other medical or medically related rehabilitation services.

“Rehabilitation engineering” means the systematic application of engineering sciences to design, develop, adapt, test, evaluate, apply, and distribute technological solutions to problems confronted by individuals with disabilities in functional areas, such as mobility, communications, hearing, vision, and cognition, and in activities associated with employment, independent living, education, and integration into the community.

“Rehabilitation technology” means the systematic application of technologies, engineering methodologies, or scientific principles to meet the needs of, and address the barriers confronted by, individuals with disabilities in areas that include education, rehabilitation, employment, transportation, independent living, and recreation. The term includes rehabilitation engineering, assistive technology devices, and assistive technology services.

“Status” means the existing condition or position of a case. The specific case statuses are as follows:

00-0 Referral (individual has been referred to or personally contacted the division by any means);

02-0 Applicant (individual requests services and signs the rights and responsibilities form);

04-0 Accepted for services (eligible), but does not meet waiting list categories being served;

06-0 Trial work experiences/extended evaluation (individual’s abilities, capabilities, and capacities are explored);

08-0 Closed before acceptance (eligibility criteria cannot be met or case is closed for some other reason);

10-\_\_\_ Accepted for services (eligible); substatus are:

10-0 Eligible individuals other than high school students;

10-1 Eligible high school students;

12-0 IPE developed, awaiting start of services;

14-0 Counseling and guidance only (counselor works with client directly to reach goals through counseling and placement);

16-0 Physical and mental restoration (when such services are the most significant services called for on the IPE);

18-\_\_\_ Training (when training is the most significant service called for on the IPE); substatus are:

18-1 Training in a workshop/facility;

18-2 On-the-job training;

18-3 Vocational-technical training;

18-4 Academic training;

18-5 Correspondence training;

18-6 Supported employment;

18-7 Other types of training not covered above (including nonsupported employment job coaching);

20-0 Ready for employment (IPE has been completed to extent possible);

22-0 Employed;

24-0 Service interrupted (IPE can no longer be continued for some reason and no new IPE is readily obvious);

26-0 Closed rehabilitated (can only occur from Status 22-0 when client has been employed in the job of closure for a minimum of 90 days);

28-0 Closed after IPE initiated (suitable employment cannot be achieved or employment resulted without benefit of services from the division);

30-0 Closed before IPE initiated (can only occur from either Status 10-\_\_\_ or 12-0 when a suitable individual plan for employment cannot be developed or achieved or when employment resulted without benefit of services from the division);

32-0 Postemployment services;

33-\_\_\_ Closed after postemployment services; substatus are:

33-1 Individual is returned to suitable employment or employment is otherwise stabilized;

33-2 Case reopened for comprehensive vocational rehabilitation services;

33-3 Situation has deteriorated to the point that further services would be of no benefit to individual;

38-0 Closed from Status 04-0 (individual does not meet one of the waiting list categories and the individual no longer wants to remain on the waiting list or fails to respond when contacted because individual’s name is at top of waiting list).

“Substantial impediment to employment” means that a physical or mental impairment (in light of attendant medical, psychological, vocational, educational, communication, and other related factors) hinders an individual from preparing for, entering into, engaging in, or retaining employment consistent with the individual’s abilities and capacities.

“Supported employment” means:

1. Competitive employment in an integrated setting, or employment in integrated work settings in which individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, with ongoing support services for individuals with the most significant disabilities:

- For whom competitive employment has not traditionally occurred or for whom competitive employment has been interrupted or intermittent as a result of a significant disability; and

- Who, because of the nature and severity of their disabilities, need intensive supported employment services from the division and extended services after transition to perform this work; or

2. Transitional employment, as defined herein, for individuals with the most significant disabilities due to mental illness.

“Supported employment services” means ongoing support services and other appropriate services needed to support and maintain an individual with a most significant disability in supported employment and provided by the division:

1. For a period of time not to exceed 18 months unless, under special circumstances, the eligible individual and the rehabilitation counselor jointly agree to extend the time to achieve the employment outcome identified in the IPE; and

2. Following successful case closure, as postemployment services that are unavailable from an extended service provider and that are necessary for the individual to maintain or regain the job placement or to advance in employment.

“Transitional employment,” as used in the definition of supported employment, means a series of temporary job placements in competitive work in integrated settings with ongoing support services for individuals with the most sig-



## EDUCATION DEPARTMENT[281](cont'd)

nificant disabilities due to mental illness. In transitional employment, the provision of ongoing support services must include continuing sequential job placements until job permanency is achieved.

“Transition services” means a coordinated set of activities provided to a student and designed within an outcome-oriented process that promotes movement from school to postschool activities. Postschool activities include postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, and community participation. The coordinated set of activities must be based upon the individual student’s needs, taking into account the student’s preferences and interests, and must include instruction, community experiences, the development of employment and other postschool adult living objectives, and, if appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services must promote or facilitate the achievement of the employment outcome identified in the student’s IPE.

“Trial work experiences” means an exploration of the individual’s abilities, capabilities, and capacity to perform in realistic work situations in an integrated work setting in order to determine whether there is clear and convincing evidence that the individual is too severely disabled to benefit from the division’s services.

DIVISION III  
ELIGIBILITY

**281—56.4(259) Individuals who are recipients of SSD/SSI.** Recipients of social security disability payments or supplemental security income payments are automatically eligible for vocational rehabilitation services.

**281—56.5(259) Eligibility for vocational rehabilitation services.** Eligibility for vocational rehabilitation services shall be determined upon the basis of the following:

**56.5(1)** A determination by qualified personnel that the applicant has a physical or mental disability;

**56.5(2)** A determination by qualified personnel that the applicant’s physical or mental impairment constitutes or results in a substantial impediment to employment for the applicant;

**56.5(3)** A determination by a qualified vocational rehabilitation counselor that the applicant requires vocational rehabilitation services to prepare for, secure, retain, or regain employment consistent with the applicant’s unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

A presumption exists that the applicant can benefit, in terms of an employment outcome, from the provision of vocational rehabilitation services. This presumption may be overcome by the division if, based on clear and convincing evidence, the division determines that the applicant is incapable of benefiting, in terms of an employment outcome, from vocational rehabilitation services due to the severity of the applicant’s disability.

**281—56.6(259) Eligibility for specific services.** Financial need must be established prior to provision of certain services at the division’s expense. Applicants are eligible for physical restoration, occupational licenses, customary occupational tools and equipment, training materials, maintenance and transportation (except transportation for diagnosis, guidance or placement) only on the basis of financial need and when services are not otherwise immediately available. The fol-

lowing criteria are established for determination of eligibility of clients for the following services:

**56.6(1) Physical restoration.**

a. The service is necessary for the client’s satisfactory occupational adjustment.

b. The condition causing disability is relatively stable or slowly progressive.

c. The condition is of a nature that treatment may be expected to remove, arrest, or substantially reduce the disability within a reasonable length of time.

d. The prognosis for life and employability are favorable.

**56.6(2) Training and training materials.**

a. The training and books and supplies are necessary for the client’s satisfactory occupational adjustment.

b. The client has the mental and physical capacity to acquire a skill that the client can perform in an occupation commensurate with the client’s abilities and limitations.

c. The client is not otherwise precluded by law from employment in the client’s field of training.

**56.6(3) Occupational licenses and occupational tools and equipment.** The division may pay for occupational licenses and customary occupational tools and equipment when necessary for the client’s entrance into, and successful performance in, a selected occupation.

**56.6(4) Transportation.** A client may be provided transportation in connection with securing medical or psychological examinations, physical restoration, training or placement, if such transportation is part of the client’s IPE. A companion may be provided transportation at the division’s expense if the client cannot travel alone.

**56.6(5) Maintenance.** A client is eligible for maintenance when it is necessary to the client’s vocational rehabilitation.

**281—56.7(259) Areas in which exceptions shall not be granted.** Pursuant to federal law, an exception shall not be granted for any of the following requirements:

1. The eligibility requirements in rule 281—56.5(259) (i.e., presence of disability, substantial impediment to employment, need for vocational rehabilitation services).

2. The required use of trial work experiences prior to closure in Status 08-0 due to severity of disability.

3. The required contents of the IPE.

4. Identification of a long-term follow-up provider in supported employment cases.

5. Being in employment and in Status 22-0 for 90 days prior to Status 26-0 closure.

6. Status progression, restrictions, and time frames, such as the federal requirement that eligibility be determined within 60 days of an individual’s application for services unless the individual has agreed to an extension.

7. Services may be provided only to individuals who are not on a waiting list, except for assessments which will help the division appropriately determine on which waiting list an individual belongs.

**281—56.8(259) Waiting list.** As required by the Act and 34 CFR 361.36, if the division cannot serve all eligible individuals who apply, the division shall develop and maintain a waiting list for services based on significance of disability. The three categories of waiting lists are as follows, listed in order of priority to be served:

1. Individuals with most significant disabilities;

2. Individuals with significant disabilities; and

3. Other individuals.

An individual’s order of selection is determined by the waiting list and the date on which the individual was deemed

## EDUCATION DEPARTMENT[281](cont'd)

eligible for services from the division. All waiting lists are statewide in scope; no regional lists are to be maintained.

Assessment of the significance of an applicant's disability is done during the process of determining eligibility but may continue after the individual has been placed on a waiting list.

**281—56.9(259) Individuals who are blind.** Pursuant to 111—10.4(216B), individuals who meet the department for the blind's definition of "blind" are to be served primarily by the department for the blind.

**281—56.10(259) Students in high school.** The division may serve students in high school without regard to their grade level or age. If an applicant is in high school and is determined to be eligible for vocational rehabilitation services, such services may begin before the student exits the secondary school system. The services shall not supplant services for which the secondary school is responsible.

When the division determines that a student is eligible for services, the student's place on the waiting list under rule 281—56.8(259) shall be determined. If the waiting list category appropriate for the student is a category currently being served, the student's case shall be moved to Status 10-1. Otherwise, the case is placed in Status 04-0, and the student's name is added to the waiting list for that category, based on the student's date of eligibility. An IPE may be written for a student in Status 10-1 at any time the student's vocational goal and the services necessary to reach that goal have been agreed upon by the student and the student's division counselor. The IPE must be in place when the student exits the secondary school system, unless the student has agreed to an extension or is on a waiting list.

The counselor assigned by the division to work with the student may participate in the student's individualized education program meetings, even if the student is on the waiting list for services. Once a student is removed from the waiting list, the counselor may also provide vocational counseling and planning for the student and coordinate services with transition planning teams. When such services do not supplant services for which the secondary school is responsible, the division may begin to provide services specifically related to employment, such as supported employment, selective placement, or job coaching services, as early as the beginning of the student's final year of secondary school.

**281—56.11(259) Establishment of financial need.** The division establishes the client's financial need prior to providing physical restoration, including prostheses; transportation (for other than diagnostic, guidance or placement purposes); maintenance; and occupational licenses, tools and equipment. Recipients of SSD/SSI are not subject to a financial needs test for any services.

In determining financial need, the clients or, in the case of minors, the minors' parents or guardians are required to make a specific declaration regarding all family income from any source that may be applied toward the cost of rehabilitation services, except those of diagnosis, counseling, training and placement, which are provided without regard to economic need. The income should be available to the client; that is, actually on hand, free from prior obligations and ready when needed.

The division shall observe the following policies in making a determination of financial need based upon the findings:

**56.11(1)** All services requiring the determination of financial need are provided on the basis of supplementing the

resources of the client or of those responsible for the client.

**56.11(2)** A supervisor may grant an exception in cases where the applicant's disability caused or is directly related to financial need and where all other sources of money have been exhausted by the applicant or the parents or guardians of a minor applicant.

**56.11(3)** Consideration shall be given to the client's responsibility for the maintenance of the client's dependents, and the client shall be expected to reserve sufficient funds to meet the client's family obligations and to provide for the family's future care, education and medical expenses.

**56.11(4)** Consideration shall also be given to factors such as prior obligations as well as to the desirability of conserving the client's own resources for future rehabilitation purposes, such as becoming established in business or providing a business automobile required for transportation or employment.

**56.11(5)** Income up to a reasonable amount should be considered from the standpoint of its conservation and its maximum utilization to the long-term interest of the client. Small casual earnings and unpredictable gifts of indeterminate value should not be counted as resources.

**56.11(6)** Financial aid from public assistance is disregarded as a resource.

DIVISION IV  
CASE MANAGEMENT

**281—56.12(259) Case finding and intake.** The division seeks to locate all disabled individuals of employable age who may be eligible for vocational rehabilitation services. To that end, referrals are accepted from all sources, and the division has established working relationships with public and private agencies in the areas of health, welfare, compensation, education, employment, and other related services. All new cases, whether referred to a local worker or to the division, are checked for previous information and are acknowledged promptly by letter or a personal call.

**281—56.13(259) Case diagnosis.** The case diagnosis constitutes a comprehensive study of the client, including medical as well as a vocational diagnosis of the individual. Each case diagnosis is based on pertinent information, including the individual's health and physical status, intelligence, educational background and achievements, vocational aptitudes and interests, employment experience and opportunities, and personal and social adjustments.

**56.13(1) Medical diagnosis.**

a. As a basis for determination of eligibility and formulation of the individual's rehabilitation plan, the division secures competent medical diagnosis. When necessary, the diagnosis is, if at all practicable, secured from recognized specialists in specific fields indicated by the general medical diagnosis. Whenever possible the diagnosis is accompanied by recommendations as to the means and methods of restoration and by a statement of any physical or mental limitations that may exist.

b. The division accepts a medical report in lieu of securing a new examination when the report can be relied upon to provide a sound basis for diagnosis of the physical or mental condition of the individual and is from one of the following providers:

- (1) A licensed physician or surgeon;
- (2) A licensed osteopathic physician or surgeon;
- (3) A licensed doctor of chiropractic;
- (4) A licensed psychologist;
- (5) A licensed physician assistant;

## EDUCATION DEPARTMENT[281](cont'd)

- (6) A licensed advanced registered nurse practitioner;
- (7) A native healing practitioner recognized as such by an Indian tribe when services are being provided to American Indians with disabilities and the native healing practitioner services are necessary to achieve the individual's vocational rehabilitation objective;
- (8) A licensed dentist;
- (9) A licensed ophthalmologist;
- (10) A licensed audiologist;
- (11) A licensed independent social worker (LISW);
- (12) A licensed mental health counselor; or
- (13) A certified school psychologist.

**56.13(2) Vocational diagnosis.** The methods of the vocational diagnosis include counseling interviews with the client; reports as may be needed, including when necessary in the individual case, reports from schools, employers, social agencies, and others; and psychological information.

**56.13(3) Recording case data.** The division maintains a record for each case. The case record contains pertinent case information including, as a minimum, the basis for determination of eligibility, the basis justifying the plan of services, and the reason for closing the case together with a justification of the closure. A case record may not be destroyed until three years after the case has been closed.

### **281—56.14(259) Individual plan for employment (IPE).**

**56.14(1) Content.** The IPE contains the client's expected employment goal, the specific vocational rehabilitation services needed to reach that goal, the entity or entities that will provide those services, and the methods available for procuring the services.

**56.14(2) Client's participation and approval.** The IPE is formulated with the client's participation and approval and provides for all rehabilitation services that are recognized to be necessary to fully accomplish the client's vocational rehabilitation whether or not services are at the expense of the division.

**56.14(3) Conditions for development of the IPE.** The basic conditions to be considered during the development of the IPE are:

- a. The belief of the division that when concluded the IPE shall satisfactorily aid in the individual's achievement of vocational rehabilitation; and
- b. That all services are to be carried to completion provided, however, that the division exercises its discretion in relation to the termination or revision of the individual's IPE when, for any reason, it becomes evident that the IPE cannot be completed or when the financial condition of the individual or the division makes termination necessary.

**56.14(4) Cooperation by the client.** The division requires good conduct, regular attendance and cooperation of all individuals engaged in rehabilitation training. The division makes the following provisions for ensuring trainee cooperation: instruction, verbally or by pamphlet, emphasizing the importance of these factors to the success of the IPE; at the beginning of the program, advising each trainee about what is expected of the trainee and that services shall continue only if the trainee's progress, attitude and conduct are satisfactory; requiring periodic progress, grade and attendance reports from the training agency; promptly calling the trainee's attention to evidence of unsatisfactory progress or attendance before such conditions become serious; providing encouragement to the trainee to promote good work habits, with due commendation for effective effort; and maintaining good relationships with the training agency.

### **DIVISION V SERVICES**

**281—56.15(259) Scope of services.** All necessary vocational rehabilitation services, including counseling, physical restoration, training, and placement, are made available to eligible individuals to the extent necessary to achieve their vocational rehabilitation. The division cooperates with federal and other state agencies providing vocational rehabilitation or similar services, and written agreements providing for interagency cooperation may be entered into as required by the Act at the discretion of the division. In selected instances, the division assumes responsibility for providing short periods of medical care for acute conditions arising in the course of the client's rehabilitation, which if not cared for would constitute a hazard to the achievement of the rehabilitation objective because of the client's limited funds and the unavailability of free medical services.

### **281—56.16(259) Training.**

**56.16(1) Duration of training.** Rehabilitation training is provided according to the actual needs of the individual. It is designed to achieve the specific employment outcome that is selected by the individual consistent with the individual's unique strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice.

**56.16(2) Types of training.** The types of training programs available are as follows:

- a. Postsecondary training, which is training in the arts and sciences for which postsecondary credit is given and which is generally considered to be applicable toward an associate's degree, bachelor's degree, or advanced degree.
- b. Vocational training, which includes any organized form of instruction that provides the knowledge and skills essential for performing in a vocational-technical area. Such knowledge and skills may be acquired through training in an institution, on the job, by correspondence, by tutors, or through a combination of any or all of these methods.
- c. Prevocational training, which includes any form of basic training given for the acquisition of background knowledge or skills prerequisite or preparatory to vocational training or to employment where the primary occupational knowledge and skills are learned on the job.
- d. Work-adjustment training, which includes any training given for any one or a combination of the following reasons:
  - (1) To assist individuals with disabilities, if needed, to acquire personal habits, attitudes and skills that will enable them to function effectively.
  - (2) To develop or increase work tolerance prior to engaging in prevocational or vocational training or in employment.
  - (3) To develop work habits and to orient the individual to the world of work.
  - (4) To provide skills or techniques for the specific purpose of enabling the individual to compensate for the loss of the use of a member of the body or the loss of a functional capacity.
- e. Job coaching, which includes, but is not limited to, intensive on-the-job training necessary to teach an employee both the job duties and job-related responsibilities.

f. Supported employment, which means competitive work in an integrated work setting with ongoing support services for individuals with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment for individuals with chronic mental

## EDUCATION DEPARTMENT[281](cont'd)

illness. Supported employment is limited to a period of 18 months unless a longer period is established in the IPE.

g. On-the-job training, which is a plan developed by the client's counselor in cooperation with the client and the employer-trainer whereby the employer-trainer accepts the client for training for a specific job or job family.

**56.16(3) Scope of training.** The division may provide training services as long as those services are part of a client's IPE. Training facilities shall be selected to meet the client's health, disability, and program needs. Training facilities within the state are preferred; those outside Iowa shall not be used unless approved for use by the vocational rehabilitation agency in the state in which the facility is located.

**56.16(4) Financial assistance for postsecondary training.** Calculations of financial assistance for postsecondary training are based on tuition and fee amounts.

a. Tuition and fee-based general assistance.

(1) For community colleges, the division shall pay no less than 40 percent and no more than 60 percent of the per-credit-hour fee charged by the community college, with no limit as to the number of credit hours taken by the client.

(2) For all other colleges and universities, public and private, whether in Iowa or outside Iowa, the division shall pay no less than 40 percent and no more than 60 percent of the per-credit-hour fee charged by the college or university, limited to the amount charged by the least expensive Iowa regents institution.

(3) For other training programs that qualify for federal financial aid, the division shall pay no less than 40 percent and no more than 60 percent of the amount charged by the least expensive Iowa regents institution, limited to the full-time rate, prorated as necessary.

(4) For training programs that do not qualify for federal financial aid, the division shall pay 75 percent of the tuition and fees charged to the client.

(5) For postsecondary institutions for the deaf where interpreter and other special-needs costs are a part of the regular tuition and fees, the division shall pay no less than 40 percent and no more than 60 percent of the amount charged by the least expensive Iowa regents institution, plus one-half of the estimated cost of the interpreter at the Iowa regents institutions.

(6) For continuing education courses, the division shall pay 75 percent of the tuition and fees charged to the client.

(7) For on-line courses, the level of support shall be determined on a case-by-case basis.

b. Support services for postsecondary training. Unless approved as an exception by the supervisor, the amounts authorized for the items listed herein cannot exceed the amounts that would otherwise be spent on tuition and fees.

(1) Transportation shall be provided only when and to the extent that the cost is caused by participation in a program of vocational rehabilitation services.

(2) Maintenance shall be provided only to support participation in a program of vocational rehabilitation services when the client has no resources to address basic living expenses.

(3) Books and supplies may be provided in lieu of tuition and fees, but the amount provided therefor shall be no less than 40 percent and no more than 60 percent of the amount based on tuition and fees, without an exception.

(4) Tutoring shall be provided only for courses that are part of the actual degree requirements and only when this service is not available for free through the school attended by the client. Tutoring for program entrance examinations, such as the SAT, LSAT, or MCAT, is not allowed.

(5) Unless approved as an exception, tools and equipment required to participate in a training program shall be provided in lieu of the tuition and fee amount.

(6) Unless approved as an exception, supplies for a course without which the course cannot be successfully completed shall be provided in lieu of the tuition and fee amount.

(7) Unless approved as an exception, fees for specialized equipment or computer programs needed to learn a subject or to access a course shall be provided in lieu of the tuition and fee amount.

(8) Fees for certification tests that are part of a course shall be paid pursuant to the 40 percent to 60 percent range established as the tuition and fees standard. For certifications and licensure fees that are not part of a course, the division shall use the financial needs assessment form to determine the level of division participation.

**56.16(5) General guidance regarding postsecondary training is available from the division's case services manual.**

**281—56.17(259) Maintenance.** The costs of maintenance shall not exceed the amount of increased expenses that the rehabilitation causes for the client or the client's family. Maintenance is not intended to provide relief from poverty or abject living conditions. A supervisor's written approval is required for amounts exceeding \$100 per week and for extraordinary one-time living expenses in excess of \$75 per day for a client.

**281—56.18(259) Transportation.** When necessary to enable an applicant or a client to participate in or receive the benefits of other vocational rehabilitation services, travel and related expenses, including expenses for training in the use of public transportation vehicles and systems, may be provided by the division. Transportation services may include the use of private or commercial conveyances (such as private automobile or van, public taxi, bus, ambulance, train, or plane) or the use of public transportation and coordination with a regional transit agency.

**281—56.19(259) Rehabilitation technology.**

**56.19(1) Rehabilitation technology services** are available at any point in the rehabilitation process, except to those clients on the waiting list. Such services include, as appropriate, an evaluation of the ability of the individual to benefit from rehabilitation technology services. Areas in which rehabilitation technology services may be of assistance include seating and positioning, augmentative communication, computer access, environmental controls, mobility equipment, and modification of the job site or home.

**56.19(2) Unless a written exception is approved by a supervisor, the following division contribution limits apply:**

a. The division shall pay for no more than \$2,000 for home modifications.

b. The division shall not pay anything toward the modification of a second living unit.

c. There is no limit on the division's contribution toward hearing aids, vehicle modifications and prostheses.

**281—56.20(259) Business initiatives.**

**56.20(1) Entrepreneurs with disabilities (EWD) program.** Pursuant to rule 261—56.1(15), the purpose of the EWD program is to provide technical assistance, business development grants (up to \$10,000) and financial assistance grants (up to \$10,000) to qualified Iowans with disabilities. EWD is administered by the Iowa department of economic development in collaboration with the division and the department for the blind. The EWD rules (see 261—Chapter 56) are full-

## EDUCATION DEPARTMENT[281](cont'd)

ly included by reference herein. The following paragraphs supplement 261—Chapter 56:

a. If a client has previously received educational or training equipment from the division through another rehabilitation program and the same equipment could be used in the client's proposed business, the division may limit or deny EWD assistance to the client.

b. If a client no longer uses equipment purchased for the client under this program, the equipment shall be returned to the division.

**56.20(2) First step program.** A client who cannot become self-sufficient or who does not for personal reasons, including reasons of personal choice, elect to declare an intent to be self-sufficient as a result of the client's business endeavor may receive limited technical and financial assistance under this program. Unless a written exception is approved by a supervisor, the division shall contribute to a client no more than \$1,000 for technical assistance and no more than \$2,500 for financial assistance. If a client no longer uses equipment purchased for the client under this program, the equipment shall be returned to the division.

**281—56.21(259) Placement.** The division not only prepares individuals with disabilities for jobs and trains them in techniques in securing their own jobs, but also accomplishes the actual placement, directly or indirectly, of all eligible individuals with disabilities who receive rehabilitation services. Placement activities are based upon adequate evaluation and preparation of the client and ordinarily include some combination of the following: evaluation of the client's job readiness; development and execution of a plan for job-seeking activities; instruction in making job applications and in conduct and appearance during interviews; employer contacts; registration with the state workforce development center administration division; job analysis and modification; job coaching; employer or supervisor consultation, advisement and training; selective placement efforts; postplacement follow-up; and relocation costs. Satisfactory employment is the objective of all division services of preparation, and placement services are an important, integral part of the overall vocational rehabilitation program. As such, in addition to the services listed herein, placement services may include the need for transportation and subsistence allowances and the purchase and acquisition of appropriate clothing, tools, equipment, and occupational licenses.

**281—56.22(259) Supported employment and transitional employment.** As defined herein, supported employment is provided to clients with the most significant disabilities for whom competitive employment has not traditionally occurred or has been interrupted or intermittent as a result of significant disabilities. Supported employment also includes transitional employment as defined herein for clients with mental illnesses.

**281—56.23(259) Miscellaneous or auxiliary services.**

**56.23(1) Family member services.** If necessary to enable an applicant or client to achieve an employment outcome as defined in these rules, the division may provide any service to a family member that it is legally able to provide to a client, as long as the purpose of the service is to assess the ability of the client to benefit from a program of vocational rehabilitation, prepare for, enter, and be successful in employment, or participate in a program of independent living services. Excluded are programs designed to prepare a family member to enter employment that will allow the family member to make money to support the applicant or client. A family member is

an individual who either (a) is a relative or guardian of an applicant or client or (b) lives in the same household as an applicant or client and has a substantial interest in the well-being of the applicant or client.

**56.23(2) Interpreter and note taker.** If deemed necessary by the division to enable a client to engage in all parts of the vocational rehabilitation or independent living program process, interpreter services or note taker services shall be provided to such client.

Interpreter services are those special communications services provided by persons qualified by training and experience to facilitate communication between division personnel and persons unable to communicate verbally in English. This includes deaf and hard-of-hearing persons who communicate using signs and finger spelling, as well as lip reading, writing, gestures, pictures, and other methods. Persons not fluent in the English language who could benefit from having any part of the vocational rehabilitation process translated into their major language are included.

Note taker services are services provided to make written notes and summaries of orally presented material. The notes may be made from a live presentation, such as a classroom lecture, or from materials that have been taped.

**56.23(3) Other goods and services.** Other goods and services include anything that is legal and necessary to the completion of the client's IPE or independent living (IL) services plan. Under no circumstances may real estate be purchased or built with division funds. Services designed to decrease the need for future IL services can only be provided directly to IL clients.

**281—56.24(259) Facilities.**

**56.24(1) Types of facilities.** It is the policy of the division to utilize any type of public or private facility that is equipped to render the required services of diagnosis, physical restoration, training, and placement. Facilities include public and private schools; colleges and universities; correspondence schools; agencies for personal adjustment training; business and industrial establishments for employment training; psychometric service agencies; physicians' and dentists' offices; hospitals; sanatoria and clinics; audiometric service centers; rehabilitation centers; the offices of occupational, physical and work therapists or agencies providing these services; convalescent homes; prosthetic appliance dealerships; and other similar facilities that are adequately equipped to contribute to the rehabilitation of individuals with disabilities.

**56.24(2) Standards for facilities providing specialized training or other services.** The division selects its training agencies on the basis of their ability to supply the quality of training desired. The general practice of the division is to utilize the facilities of accredited or approved colleges, universities, trade and commercial schools for residence and correspondence training.

**56.24(3) Facilities providing on-the-job training.** Facilities selected as locations for employment training must have personnel qualified with respect to personality, knowledge and skills in the technique of instruction, have adequate equipment and instructional materials and be willing to make definite provisions for a plan of graduated progress in the job to be learned according to an efficiently organized and supervised instructional schedule.

**56.24(4) Facilities providing personal adjustment training.** In addition to other standards set for tutorial and on-the-job training, an important basis for selection of facilities for personal adjustment training is a sympathetic understanding

## EDUCATION DEPARTMENT[281](cont'd)

of the personal adjustment needs of the individual and their importance to the client's total rehabilitation.

**281—56.25(259) Exceptions to payment for services.** As required by the Act and 34 CFR 361.50(c), the division shall have a method of allowing for exceptions to its rules regarding payment for services.

**56.25(1) Reasons for exceptions.** Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

- a. The need is disability related.
- b. The applicant has used all sources available, such as applying for and using all available loans in postsecondary training situations.
- c. Family issues, such as dissolution of marriage, loss of income, or estrangement, render resources unavailable.
- d. Academic performance is poor, but could reasonably be expected to return to the required threshold in one semester.

**56.25(2) Prohibitions.** Pursuant to federal law, the division is subject to the following prohibitions:

- a. The fee schedule shall not be designed in a way that effectively denies an individual a necessary service.
- b. An absolute dollar limit on specific service categories or on the total services provided to an individual may not be established.

**56.25(3) Exception process.** A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

**281—56.26(259) Exceptions to duration of services.** As required by the Act and 34 CFR 361.50(d), the division shall have a method of allowing for exceptions to its rules regarding the duration of services.

**56.26(1) Reasons for exceptions.** Major reasons that will be considered in determining if an exception should be granted in favor of an applicant include, but are not limited to, the following:

- a. The need is disability related.
- b. Academic performance is poor, but could reasonably be expected to return to or above the required threshold in one semester.

**56.26(2) Prohibitions.** Pursuant to federal law, the division is subject to the following prohibitions:

- a. The time period established for the provision of services shall not be so short as to effectively deny an individual a necessary service.
- b. An absolute time limit on the provision of a specific service or on the total services provided to an individual may not be established. The duration of each service needed by an individual must be determined on an individual basis and reflected in that individual's IPE.

**56.26(3) Exception process.** A request for an exception shall originate with a counselor, who shall either develop a case note detailing the reason(s) why an exception is believed to be warranted or complete the appropriate form. The case note or form shall be presented to a supervisor for determination. The supervisor's determination shall be documented by the supervisor in a separate case note or in the designated place on the form.

**281—56.27(259) Maximum rates of payment to training facilities.** In no case shall the amount paid a training facility exceed the rate published, and in the case of facilities not having published rates, the amount paid the facility shall not exceed the amount paid to the facility by other public agencies for similar services. The division will maintain information necessary to justify the rates of payment made to training facilities.

DIVISION VI  
PURCHASING PRINCIPLES

**281—56.28(259) Purchasing.**

**56.28(1) General purchasing principles.**

a. The division shall purchase only those items/models that allow a client to meet the client's vocational objective. The division shall not pay for additional features that exceed the requirements to meet a client's vocational objective or that serve primarily to enhance the client's personal life.

b. The division shall purchase the most economical item/model that meets the client's vocational needs.

c. The division shall seek out the most economical alternatives to meet the client's vocational needs.

d. The division shall encourage all clients to develop strategies and savings programs to pay for replacement items/models or upgrades.

**56.28(2) Client-specific purchasing principles.** When considering what item/model to purchase for a specific client, the division shall in all cases consider the following factors:

a. Whether the item/model truly is needed for the client to be able to do the essential functions of the client's job.

b. Whether a more economical item/model is available to permit the client to perform the essential functions of the client's job.

DIVISION VII  
SUPERVISOR REVIEW, MEDIATION,  
HEARINGS, AND APPEALS

**281—56.29(259) Review process.** At the time of making application for rehabilitation services, and at other times throughout the rehabilitation process, all applicants and clients shall be informed of the right to appeal and the procedures by which to file an appeal. If an applicant or client is dissatisfied with any agency decision that directly affects the applicant or client, the applicant, client, or designated representative may appeal that decision. The term "appellant" shall be used to indicate the applicant, client, or designated representative who initiates an appeal. The appellant initiates the appeal process either by filing the appropriate division appeal form, available from any counselor or supervisor of the division, or by calling a counselor or supervisor. If the appeal process is initiated by telephone, the counselor or supervisor who received the call must complete the appeal form to the best of that person's ability with information from the appellant. Once the appeal form has been filed with the division administrator, a hearing shall be held before an impartial hearing officer (IHO) within the next 60 days unless an extension of time is mutually agreed upon or one of the parties shows good cause for an extension. The appellant may request that the appeal go directly to impartial hearing, but the appellant shall be offered the opportunity for a supervisor review or mediation.

**281—56.30(259) Supervisor review.** As a first step, the appellant shall be advised that a supervisor review of the counselor's decision may be requested by notifying the counselor

## EDUCATION DEPARTMENT[281](cont'd)

or supervisor in person, by telephone or by letter of the decision to appeal. If the supervisor has been involved in decisions in the case to the extent that the supervisor cannot render a fair and impartial decision or if the supervisor is not available to complete the review in a timely manner, the appeal and case file shall be forwarded to the assistant bureau chief for review. The appellant is not required to request supervisor review as a prerequisite for appeal before an IHO; however, if a supervisor review is requested, the following steps shall be observed:

**56.30(1)** Upon receipt of a request for supervisor review, the supervisor shall notify all appropriate parties of the date and nature of the appeal; examine case file documentation; discuss the issues and reasons for the decision with the immediate counselor and other counselors who may have been previously involved with the case/issue; and, if necessary, meet with any or all parties to discuss the dispute.

**56.30(2)** The supervisor shall have ten working days from receipt of the request for supervisor review to decide the issue and notify the appellant in writing. A copy of the supervisor's decision shall be sent to all appropriate parties.

**56.30(3)** If the supervisor's decision is adverse to the appellant, the copy of the written decision given to the appellant shall include further appeal procedures, including notification that the appellant has ten days from the date of the letter to file further appeal. Also included shall be notice of the Iowa client assistance program (ICAP), a program within the department of human rights, commission of persons with disabilities. If ICAP determines it appropriate, ICAP provides assistance in the preparation and presentation of the appellant's case.

**56.30(4)** As an alternative to, but not to the exclusion of, filing for further appeal, the appellant may request mediation of the supervisor's decision.

**281—56.31(259) Mediation.** Regardless of whether a supervisor review is requested, an appellant may request resolution of the dispute through the mediation process. Mediation is also available if the appellant is dissatisfied with the supervisor's decision. If mediation is requested by the appellant and agreed to by the division, the following steps shall be observed:

**56.31(1)** Mediation shall be conducted by a qualified and impartial mediator trained in effective mediation techniques, selected randomly by the division from a list maintained by the division.

**56.31(2)** The mediation shall be conducted in a timely manner at a location convenient to the parties.

**56.31(3)** Mediation shall not be used to delay the appellant's right to a hearing.

**56.31(4)** Mediation must be voluntary on the part of the appellant.

**56.31(5)** Mediation is at no cost to the appellant.

**56.31(6)** All discussions and other communications that occur during the mediation process are confidential. Any offers of settlement made by either party during the mediation process are inadmissible if further appeal is sought by the appellant.

**56.31(7)** Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the mediator, unless so requested by the appellant.

**281—56.32(259) Hearing before impartial hearing officer.** Regardless of whether the appellant has used supervisor review or mediation or both, if the appellant requests a hearing before an IHO, the following provisions apply:

**56.32(1)** The division shall appoint the IHO from the pool of hearing officers with whom the division has contracts. The IHO shall be assigned on a random basis or by agreement between the administrator of the division and the appellant.

**56.32(2)** The hearing shall be held within 20 days of the receipt of the appointment of the IHO. A written decision shall be rendered and given to the parties by the IHO within 30 days after completion of the hearing. Either or both of these time frames may be extended by mutual agreement of the parties or by a showing of good cause by one party.

**56.32(3)** The appellant shall be informed that the filing of an appeal confers consent for the release of the case file information to the IHO. The IHO shall have access to the case file or a copy thereof at any time following acceptance of the appointment to hear the case.

**56.32(4)** Within five working days after appointment, the IHO shall notify both parties in writing of the following:

- a. The role of the IHO;
- b. The IHO's understanding of the reasons for the appeal and the requested resolution;
- c. The date, time, and place for the hearing, which shall be accessible and located as advantageously as possible for both parties but more so for the appellant;
- d. The availability of the case file for review and copying in a vocational rehabilitation office prior to the hearing and how to arrange for the same (see also rule 281—56.29(259));
- e. That the hearing shall be closed to the public unless the appellant specifically requests an open hearing;
- f. That the appellant may present evidence and information personally, may call witnesses, may be represented by counsel or other appropriate advocate at the appellant's expense, and may examine all witnesses and other relevant sources of information and evidence;
- g. The availability to the appellant of the Iowa client assistance program (ICAP) for possible assistance;
- h. Information about the amount of time it will take to complete the hearing process;
- i. The possibility of reimbursement of necessary travel and related expenses; and
- j. The availability of interpreter and reader services for appellants not familiar with the English language and those who are deaf, as well as transportation or attendant services for those appellants requiring such assistance.

**56.32(5)** Existing division services provided to an appellant shall not be suspended, reduced, or terminated pending decision of the IHO, unless so requested by the appellant.

**56.32(6)** The IHO shall provide a full written decision, including the findings of fact and grounds for the decision. Unless either party chooses to seek judicial review pursuant to Iowa Code chapter 17A, the decision of the IHO is final. If judicial review is sought, the IHO's decision shall be implemented pending outcome of the judicial review.

## DIVISION VIII

## PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The following rules are implemented in addition to the department's rules in 281—Chapter 5.

**281—56.33(259) Collection and maintenance of records.** The division has the authority to collect and maintain records on individuals under the Act, the state plan for vocational rehabilitation services, and the Social Security Act. The acceptance of the provisions and benefits of the Rehabilitation Act, under Iowa Code section 259.1, is conditioned on the requirement that the division maintain the confidentiality of personally identifiable information and its release under certain cir-

## EDUCATION DEPARTMENT[281](cont'd)

cumstances as provided by applicable federal laws. These laws include, but are not limited to, the following:

1. The Freedom of Information Act (5 U.S.C. 552, added by P.L. 90-23 and amended by P.L. 93-502 and P.L. 94-409).
2. The Privacy Act of 1974 (5 U.S.C. 552a, added by P.L. 93-579).
3. The Drug Abuse Office and Treatment Act (21 U.S.C. 1175, added by P.L. 92-255), as amended by the Comprehensive Alcohol and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendment of 1974 (42 U.S.C. 4582, added by P.L. 93-282).
4. Section 6103 of the Internal Revenue Code (26 U.S.C. 6103) as amended by the Tax Reform Act of 1976 (P.L. 94-455).
5. The Government in the Sunshine Act (P.L. 94-409).
6. The Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. 1232g, added by P.L. 93-568).

Pursuant to Iowa Code section 259.9, the state of Iowa accepts the social security system rules for the disability determination program of the division. Failure to follow the provisions of the Act can result in the loss of federal funds. The state plan provides that all personally identifiable information is confidential and may be released only with the informed written consent of the client or the client's representative, except as permitted by federal law. Any contrary provision in Iowa Code chapter 22 must be waived in order for the state to receive federal funds, services, and essential information for the administration of vocational rehabilitation services.

#### **281—56.34(259) Personally identifiable information.**

This rule describes the nature and extent of the personally identifiable information collected, maintained, and retrieved by the agency by personal identifier in record systems as defined herein. The record systems maintained by the division include the following:

**56.34(1)** Personnel records. These records contain information relating to initial application, job performance and evaluation, reprimands, grievances, notes from and reports of investigations of allegations related to improper employee behavior, and reports of hearings and outcomes of reprimands and grievances. Pursuant to Iowa Code section 22.7(11), some of the information in personnel records may be confidential.

**56.34(2)** Client case records. An individual file is maintained for each person who has been referred to or has applied for the services of the division. The file contains a variety of personal information about the client, which is used in the establishment of eligibility and the provision of agency services. All information is personally identifiable and is confidential.

**56.34(3)** Client service record computer database. This database contains personal data items about individual clients. Data identifying the client is confidential. Data in the aggregate is not personally identifiable and thus is not confidential.

**56.34(4)** Vendor purchase records. These are records of purchases of goods or services made for the benefit of clients. If the record contains the client's name or other personal identifiers, the record is confidential. Lists of nonclient vendors, services purchased, and the costs of those services are not confidential when retrieved from a data processing system without personally identifiable information.

**56.34(5)** Records and transcripts of hearings or client appeals. These contain personally identifiable information about a client's case, appeal from or for some action, and the

decision that has been rendered. The personally identifiable information is confidential. Some of the information is maintained in an index provided for in Iowa Code subsection 17A.3(1)“d.” Information is available after confidential personally identifiable information is deleted.

**56.34(6)** All computer databases of client and applicant names and other identifiers. The data processing system contains client status records organized by a variety of personal identifiers. These records are confidential as long as any personally identifiable information is present.

**56.34(7)** All computer-generated reports that contain personally identifiable information. The division may choose to draw or generate from a data processing system reports that contain information or an identifier which would allow the identification of an individual client or clients. This material is for internal division use only and is confidential.

**281—56.35(259) Other groups of records routinely available for public inspection.** This rule describes groups of records maintained by the division other than record systems. These records are routinely available to the public, with the exception of parts of the records that contain confidential information. This rule generally describes the nature of the records, the type of information contained therein, and whether the records are confidential in whole or in part.

**56.35(1)** Rule making. Rule-making records, including public comments on proposed rules, are not confidential.

**56.35(2)** Council and commission records. Agendas, minutes, and materials presented to any council or commission required under the Act are available to the public with the exception of those records that are exempt from disclosure under Iowa Code section 21.5. Council and commission records are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319.

**56.35(3)** Publications. News releases, annual reports, project reports, agency newsletters, and other publications are available from the main office of the division at 510 E. 12th Street, Des Moines, Iowa 50319. Brochures describing various division programs are also available at local offices of the division.

**56.35(4)** Statistical reports. Periodic reports of statistical information on expenditures, numbers and types of case closures, and aggregate data on various client characteristics are compiled as needed for agency administration or as required by the federal funding source and are available to the public.

**56.35(5)** Grants. Records of persons receiving grants from division services are available through the main office of the division. Grant records contain information about grantees and may contain information about employees of a grantee that has been collected pursuant to federal requirements.

**56.35(6)** Published materials. The division uses many legal and technical publications, which may be inspected by the public upon request. Some of these materials may be protected by copyright law.

**56.35(7)** Policy manuals. Manuals containing the policies and procedures for programs administered by the division are available in every office of the division. Subscriptions to all or part of the manuals are available at the cost of production and handling. Requests for subscription information should be addressed to Vocational Rehabilitation Services Division, 510 E. 12th Street, Des Moines, Iowa 50319.

**56.35(8)** Operating expense records. The division maintains records of the expense of operation of the division, including records related to office rent, employee travel ex-



## EDUCATION DEPARTMENT[281](cont'd)

penses, and costs of supplies and postage, all of which are available to the public.

**56.35(9)** Training records. Lists of training programs, the persons approved to attend, and associated costs are maintained in these records, which are available to the public.

**56.35(10)** Facility surveys. Records of division reviews of facilities providing services to the division are maintained and used to determine the current acceptable fee schedule. Information about individuals may be included in these records; therefore, parts of the records may be confidential.

**56.35(11)** All other records that are not exempted from disclosure by law.

## DIVISION IX

## STATE REHABILITATION COUNCIL

**281—56.36(259) State rehabilitation council.**

**56.36(1)** Composition. The state rehabilitation council shall be composed of no less than 15 members, appointed by the governor. A majority of the council members must be individuals with disabilities who are not employed by the division. The council members shall include the following:

- a. At least one representative of the statewide independent living council, one of whom must be the chairperson or chairperson's designee of that council;
- b. At least one representative of a parent training and information center established pursuant to Section 682(a) of the Individuals with Disabilities Education Act;
- c. At least one representative of the client assistance program, one of whom must be the director or the director's designee of that program;
- d. At least one qualified vocational rehabilitation counselor with knowledge of and experience with vocational rehabilitation programs who serves as an ex officio, nonvoting member of the council if employed by the division;
- e. At least one representative of community rehabilitation program service providers;
- f. Four representatives of business, industry, and labor;
- g. Representatives of disability groups that include a cross section of:
  - (1) Individuals with physical, cognitive, sensory, and mental disabilities; and
  - (2) Representatives of individuals with disabilities who have difficulty representing themselves or are unable, due to their disabilities, to represent themselves;
- h. Current or former applicants for, or recipients of, vocational rehabilitation services;
- i. At least one representative of the department's bureau of children, family, and community services;
- j. At least one representative of the Iowa workforce development board; and
- k. The director of the division, who serves as an ex officio, nonvoting member of the council.

**56.36(2)** Chairperson. The chairperson must be selected by the members of the council from among the voting members of the council.

**56.36(3)** Terms. Each member of the council shall be appointed for a term of no more than three years. Each member of the council, other than the representative of the client assistance program, shall serve for no more than two consecutive full terms. The terms of service of the members initially appointed must be for a varied number of years to ensure that terms expire on a staggered basis.

**56.36(4)** Vacancies. The governor shall fill a vacancy in council membership, unless the governor has delegated authority to fill that vacancy to the remaining members of the council.

**56.36(5)** Functions. The council shall perform the following functions:

- a. Review and advise the division regarding the performance of the division's responsibilities under this chapter and the Act;
- b. In partnership with the division, develop, agree to, and review state goals and priorities;
- c. In partnership with the division, evaluate the effectiveness of the vocational rehabilitation program and submit reports of progress to the federal Secretary of Education when required;
- d. Assist in the preparation of the state plan and amendments thereto, applications, reports, needs assessments, and evaluations required by the Act;
- e. To the extent feasible, conduct a review and analysis of the effectiveness of and consumer satisfaction with:
  - (1) The functions performed by the division;
  - (2) The vocational rehabilitation services provided by state agencies and other public and private entities responsible for providing vocational rehabilitation services to individuals with disabilities under the Act; and
  - (3) The employment outcomes achieved by eligible individuals receiving services from the division, including the availability of health and other employment benefits in connection with those employment outcomes;
- f. Prepare and submit to the governor and to the Secretary of Education an annual report on the status of vocational rehabilitation programs operated within the state and make the report available to the public through appropriate modes of communication;
- g. Coordinate activities with the activities of other councils within the state, including the statewide independent living council, the advisory panel established under Section 612(a)(21) of the Individuals with Disabilities Education Act, the state developmental disabilities planning council, the state mental health planning and advisory council, and the state workforce development board;
- h. Provide for the coordination and establishment of working relationships between the division and the statewide independent living council and centers for independent living within the state;
- i. Prepare a plan for the provision of resources, including staff and other personnel, that may be necessary and sufficient for the council to carry out its functions under this rule; and
- j. Perform other comparable functions, consistent with the purpose of the Act, as the council determines to be appropriate, that are comparable to the other functions performed by the council.

**56.36(6)** Meetings. The council shall convene at least four meetings a year in locations open and accessible to the general public, including individuals with disabilities. The council's meetings are subject to Iowa Code chapter 21, the open meetings law.

Rule 281—56.36(259) is intended to implement 34 CFR 361.16 and 361.17.

These rules are intended to implement Iowa Code chapter 259, the federal Rehabilitation Act of 1973, as amended, and the federal Social Security Act (42 U.S.C. Section 301, et seq.).

**ARC 3265B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to rescind Chapter 70, “AEA Media Centers,” Iowa Administrative Code.

The requirements of Chapter 70 were incorporated into 281—Chapter 72, “Accreditation of Area Education Agencies,” in October 2001.

No waiver provision is included in this amendment. The Department provides an agencywide waiver provision in 281—Chapter 4.

Any interested party may make written comments or suggestions on the proposed rescission on or before April 22, 2004. Written materials should be directed to Jeff Berger, Legislative Liaison, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or sent by fax to (515)281-4122. Persons who wish to convey their views orally should contact Jeff Berger at (515)281-3399 or at the Department’s offices on the second floor of the Grimes State Office Building.

A public hearing will be held over the Iowa Communications Network (ICN) on April 22, 2004, from 12 noon to 1 p.m. at the locations listed below. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Department of Education (origination site)	Keystone Area Education Agency
Grimes State Office Building Second Floor Des Moines (515)281-3038	1400 2nd Street NW Elkader (563)245-1480
Mississippi Bend Area Education Agency 729 21st Street Louisa Room Bettendorf (563)359-1371	Prairie Lakes Area Education Agency 330 Avenue M Room 204 Fort Dodge (515)574-5500
Great River Area Education Agency 3601 West Avenue Road Burlington (319)753-6561	Heartland Area Education Agency 6500 Corporate Drive Johnston (515)270-9030
Area Education Agency 267 3712 Cedar Heights Drive Cedar Falls (319)273-8200	Southern Prairie Area Education Agency 2814 N. Court Street Ottumwa (641)682-8591
Grant Wood Area Education Agency 4401 Sixth Street SW Revere Room Cedar Rapids (319)399-6700	Area Education Agency 4 1382 4th Avenue NE Room 103 Sioux Center (712)722-4378

Loess Hills Area Education  
Agency  
24997 Hwy 92, Box 1109  
Council Bluffs  
(712)366-0503

Western Hills Area Education  
Agency  
1520 Morningside Avenue  
Room 209A  
Sioux City  
(712)274-6000

Green Valley Area Education  
Agency  
1405 N. Lincoln  
Turner Room  
Creston  
(641)782-8443

Any individual who intends to attend the public hearing and requires special accommodations for specific needs should contact Jeff Berger at (515)281-3399 no later than April 15, 2004.

This amendment is intended to implement Iowa Code sections 256.7, 256.16 and 272.25(1).

The following amendment is proposed.

Rescind and reserve **281—Chapter 70.**

**ARC 3266B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to rescind Chapter 71, “AEA Educational Services,” Iowa Administrative Code.

The requirements of Chapter 71 were incorporated into 281—Chapter 72, “Accreditation of Area Education Agencies,” in October 2001.

No waiver provision is included in this amendment. The Department provides an agencywide waiver provision in 281—Chapter 4.

Any interested party may make written comments or suggestions on the proposed rescission on or before April 22, 2004. Written materials should be directed to Jeff Berger, Legislative Liaison, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or sent by fax to (515)281-4122. Persons who wish to convey their views orally should contact Jeff Berger at (515)281-3399 or at the Department’s offices on the second floor of the Grimes State Office Building.

A public hearing will be held over the Iowa Communications Network (ICN) on April 22, 2004, from 12 noon to 1 p.m. at the locations listed below. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Department of Education (origination site)	Keystone Area Education Agency
Grimes State Office Building Second Floor Des Moines (515)281-3038	1400 2nd Street NW Elkader (563)245-1480

## EDUCATION DEPARTMENT[281](cont'd)

Mississippi Bend Area  
Education Agency  
729 21st Street  
Louisa Room  
Bettendorf  
(563)359-1371

Great River Area Education  
Agency  
3601 West Avenue Road  
Burlington  
(319)753-6561

Area Education Agency 267  
3712 Cedar Heights Drive  
Cedar Falls  
(319)273-8200

Grant Wood Area Education  
Agency  
4401 Sixth Street SW  
Revere Room  
Cedar Rapids  
(319)399-6700

Loess Hills Area Education  
Agency  
24997 Hwy 92, Box 1109  
Council Bluffs  
(712)366-0503

Green Valley Area Education  
Agency  
1405 N. Lincoln  
Turner Room  
Creston  
(641)782-8443

Prairie Lakes Area Education  
Agency  
330 Avenue M  
Room 204  
Fort Dodge  
(515)574-5500

Heartland Area Education  
Agency  
6500 Corporate Drive  
Johnston  
(515)270-9030

Southern Prairie Area  
Education Agency  
2814 N. Court Street  
Ottumwa  
(641)682-8591

Area Education Agency 4  
1382 4th Avenue NE  
Room 103  
Sioux Center  
(712)722-4378

Western Hills Area Education  
Agency  
1520 Morningside Avenue  
Room 209A  
Sioux City  
(712)274-6000

Any individual who intends to attend the public hearing and requires special accommodations for specific needs should contact Jeff Berger at (515)281-3399 no later than April 15, 2004.

This amendment is intended to implement Iowa Code sections 256.7, 256.16 and 272.25(1).

The following amendment is proposed.

Rescind and reserve **281—Chapter 71.**

**ARC 3267B****EDUCATION DEPARTMENT[281]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 79, “Standards for Practitioner Preparation Programs,” Iowa Administrative Code.

This amendment is required by Iowa Code Supplement section 272.25(4) [2003 Iowa Acts, chapter 180, section 17], and is part of ongoing program approval revisions.

No waiver provision is included because the Board of Education has adopted agencywide waiver rules.

Any interested person may submit oral or written suggestions or comments on or before April 27, 2004, by addressing

them to Jackie Crawford, Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, or by telephoning (515)281-3427.

There will be a public hearing on April 27, 2004, at 2 p.m. in Conference Room 3 North, Grimes State Office Building, Des Moines, Iowa, at which time persons may present their views orally and in writing.

This amendment is intended to implement Iowa Code Supplement section 272.25(4).

The following amendment is proposed.

Amend subrule 79.13(2) as follows:

**79.13(2) Student teaching** *The student teaching experience shall:*

*a. Be a full-time experience for a minimum of 12 consecutive weeks in duration during the student’s final year of the practitioner preparation program; ;*

*b. Consist of interactive experiences that involve the college or university personnel, the student teacher, the cooperating teacher, and administrative personnel from the cooperating teacher’s school district;*

*c. Include prescribed minimum expectations and responsibilities, including ethical behavior, for student teachers;*

*d. Include prescribed minimum expectations and responsibilities for cooperating teachers, the school district, and higher education supervising faculty members;*

*e. Include opportunities for the student teacher to become knowledgeable about the Iowa teaching standards, including a mock evaluation performed by the cooperating teacher or a person who holds an Iowa evaluator certificate (see 282—subrule 20.5(3)). The mock evaluation shall not be used as an assessment tool by the practitioner preparation program.*

**ARC 3261B****ENVIRONMENTAL PROTECTION  
COMMISSION[567]****Amended Notice of Intended Action**

Pursuant to the provisions of Iowa Code sections 455B.133 and 459.207, the Environmental Protection Commission hereby gives notice that a public hearing will be held on April 1, 2004, from 6:30 to 8:30 p.m. at the North Iowa Area Community College Muse-Norris Center, 500 College Drive, Mason City, Iowa. The purpose of the public hearing is to receive oral or written comments regarding proposed amendments to Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” and new Chapter 32, “Health Effects Value (HEV),” for the purpose of establishing a health effects value for hydrogen sulfide and adopting by reference the “Iowa Ambient Air Sampling Manual.”

The public comment period, as stated in the original Notice of Intended Action, remains in effect until April 8, 2004. The original Notice of Intended Action, which included announcements for public hearings to be held at other locations in Iowa, was published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3092B.**

## ARC 3270B

### HISTORICAL DIVISION[223]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 303.1 and 303.1A, the Department of Cultural Affairs hereby gives Notice of Intended Action to amend Historical Division rules, Chapter 1, "Description of Organization," Iowa Administrative Code.

The proposed amendments clarify the internal organization and structure of the Historical Division, and describe the purposes of the State Historical Society of Iowa, the service locations, and the Board of Trustees.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on April 20, 2004. Interested persons may submit written or oral comments by contacting Kathy Gourley, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)282-0502; E-mail [kathy.gourley@iowa.gov](mailto:kathy.gourley@iowa.gov). Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515) 281-6913.

Also, there will be a public hearing on April 20, 2004, from 1 to 2 p.m. at the above address, in the Tone Board Room, 3rd Floor West, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Department and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 303.

The following amendments are proposed.

Amend 223—Chapter 1 as follows:

#### CHAPTER 1 DESCRIPTION OF ORGANIZATION

**223—1.1(303) Purpose.** This chapter describes the purposes of the society; the service locations; ; internal organization, and procedures through which the public may obtain services; and the board of trustees of the society.

**223—1.2(17A,303) Definitions.** The definitions listed in Iowa Code section 17A.2 shall apply for terms as they are used throughout this chapter in 223—Chapters 1 to 50. In addition, the following definitions apply:

"Administrator" means *the* administrator of the historical division of the department of cultural affairs.

"Board" means the board of trustees of the society.

"Board of trustees of the society" or "*board*" means the 12-member advisory board of the historical division of the department of cultural affairs.

"Bureau" means a subdivision within the historical division of the department of cultural affairs.

"Department" means *the* department of cultural affairs.

"Director" means *the* director of the department of cultural affairs.

"Historical division" means the division of the department of cultural affairs, also termed "the society."

"Iowa historical foundation" means the not-for-profit corporation created to provide financial support to the state historical society of Iowa in accordance with Iowa Code subsection 303.7(4).

"Society" means *the* state historical society of Iowa.

"Trustees" means the board of trustees of the society.

**223—1.3(303) Mission statement.** The mission statement of the society states:

The state of Iowa is obligated to assist its citizens in identifying themselves, individually and collectively, in place and time. To understand Iowa history is to understand how we have become who we are and how we can shape who we are yet to become. Knowledge of Iowa history is essential to realize our potential as individuals and as a society.

*The state historical society of Iowa has a dual mission of preservation and education. As a trustee of Iowa's historical legacy, the state historical society of Iowa identifies, records, collects, preserves, manages, and provides access to Iowa's historical resources. As an advocate of understanding Iowa's past, the state historical society of Iowa educates Iowans of all ages, conducts and stimulates research, disseminates information, and encourages and supports historical preservation and education efforts of others throughout the state.*

The state historical society of Iowa, ~~the historical division of the department of cultural affairs,~~ is the state agency created and empowered by the general assembly as the official trustee of Iowa's human heritage. The society has the responsibility and authority to:

- Identify, record, collect, preserve, and manage the manifestations of Iowa's history;
- Interpret and disseminate Iowa history;
- Conduct, stimulate, produce, and share scholarly research on Iowa history;
- Promote and coordinate the teaching of Iowa history; and
- Advocate the preservation and stewardship of Iowa's historical resources; and
- Enter into agreements with nonprofit corporations to undertake activities of benefit to the society.

**223—1.4(303) Administrator and bureaus Organization.**

**1.4(1) Administrator.** The administrator of the society is appointed by the director of the department of cultural affairs and serves at the director's pleasure. *In accordance with Iowa Code section 303.2(2c), the administrator serves as the state historic preservation officer.* The administrator selects all society personnel and manages the operation of all society programs and facilities. ~~The society operates volunteer and internship programs in all bureaus. Inquiries may be directed to the chief of the appropriate bureau or the administrator.~~ The administrator operates from offices located at the State Historical Building, Capitol Complex 600 East Locust Street, Des Moines, Iowa, telephone (515)281-8837.

**1.4(2) Bureaus.** The society may organize its activities into any number of bureaus to promote Iowa history.

**223—1.5(303) Facilities management.**

**1.5(1) Location Locations.**

a. The society operates two major facilities: The State Historical Building, 600 East Locust Street, Des Moines, Iowa 50319, (515)281-5111, and the Centennial Building, 402 Iowa Avenue, Iowa City, Iowa 52240, (319)335-3916 and.

b. The society also operates ten eight historic sites:

## HISTORICAL DIVISION[223](cont'd)

(1) Abbie Gardner Sharp Cabin, Arnolds Park, Iowa 51331, (515)281-7650;

(2) American Gothic House, Eldon, Iowa 52554, (515)281-7650;

(3) Blood Run National Historic Landmark, Inwood, Iowa 51240, (515)281-7650;

(4) Matthew Edel Blacksmith Shop, Haverhill, Iowa 50120, (515)281-7650;

(5) Montauk Governor's Home, Union Sunday School, and Clermont Museum, Clermont, Iowa 52135, (319)423-7173;

(6) Plum Grove, Iowa City, Iowa 52240, (515)281-7650;

(7) Toolesboro Mounds National Historic Landmark, Wapello, Iowa 52653, (515)281-7650; and

(8) Western Historic Trails Center, 3434 Richard Downing Avenue, Council Bluffs, Iowa 51501, (712)366-4900.

**1.5(2) Internet Web site.** The society's Internet home page is located at <http://www.iowahistory.org>.

**1.5(2) 1.5(3) Hours and days of operation.** Public hours and days of operation shall be permanently posted at each society facility and on the society's Internet Web site. The hours for all facilities shall be approved by the director of the department of cultural affairs, or designee, upon recommendation of the administrator of the society. Changes in the hours for a facility shall be effective upon 30 days' notice as posted at all sites.

**1.5(3) 1.5(4) Fees.** Fees may be charged and collected by the society and shall be administered according to Iowa Code section 303.9. Fees may be charged for, but are not limited to, : facilities rental; group tours; educational programs; speaking engagements; photocopying and document reproduction; census searches; photographic searches and reproduction; electronic distribution of materials; rights to publish; conservation and consultation services; artifact and specimen identification and reference; vital records searches and verification; admissions, and reference, consultation and technical services; research and application processing; admissions; memberships; and subscriptions. All fees charged by the society shall be approved by the director of the department of cultural affairs, or designee, upon recommendation of the administrator of the society and shall be effective upon 30 days' notice. This notice shall be a public posting in the facility. All fees shall be permanently posted.

**1.5(4) Smoking.** Smoking shall be prohibited in all facilities under the management of the society.

**1.5(5) Food and drink.** Consumption of food and beverages shall be prohibited in all society facilities except in specific areas designated by the director of the department of cultural affairs, or designee, upon recommendation of the administrator of the society.

**1.5(6) 1.5(5) Facilities use.** Resource protection is the underlying principle guiding the use of society facilities. This subrule sets forth conditions of public use which apply to all society facilities. Additional restrictions or exceptions pertain to specific facilities as listed in subrule 1.5(6).

a. **Individuals and groups.** All facilities of the society are open to individuals in accordance with the posted schedule. Groups may arrange for educational tours by contacting the administrative office at each facility as noted in subrule 1.5(1). Prior arrangement is necessary for all educational tours. Fees may be applicable for group tours.

a. **Individuals and groups.** All facilities of the society are open to individuals in accordance with the posted schedule. Groups may arrange for educational programs and group

tours by contacting the society. Prior arrangement is necessary for all educational programs and group tours.

b. **Facility rentals.** Certain facilities of the society are available for rental. An individual or group renting a society facility shall be liable for all damage to the facility. The renter shall be billed for the cost of repairs, extraordinary cleaning, and, if necessary, the collection of costs related to any damage caused during rental.

c. **Pets.** With the exception of those assisting the hearing or visually impaired, pets shall be prohibited in society buildings. All pets on the grounds of any society facility shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds of a society facility.

d. **Smoking.** Smoking shall be prohibited in all society facilities.

e. **Food and drink.** Consumption of food and beverages shall be prohibited in all society facilities except in specific areas designated by the director, or designee, upon recommendation of the administrator.

f. **Camping.** Camping shall be prohibited at all society facilities, except for special events approved by the director, or designee, upon recommendation of the administrator.

**1.5(6) Use of specific facilities.**

b. **Building use—**a. State Historical Building, Capitol Complex, Des Moines, Iowa 50319, (515)281-3159.

(1) All operations are in accordance with 450—subrule 1.6(3), Iowa Administrative Code. All operations are in accordance with 11—subrule 100.4(3), Iowa Administrative Code. The society may contract with a nonprofit corporation to operate a facility rental program.

(1) **Facilities available.** The society may rent the auditorium, atrium, two educational rooms, Terrace Cafe, and outside patios. Details concerning room size, rental rates for day and evening functions, and scheduling the rental program may be obtained from the Facilities Coordinator facilities rental coordinator, State Historical Society of Iowa, Capitol Complex 600 East Locust Street, Des Moines, Iowa 50319, (515)281-8864 or at <http://www.iowahistory.org>.

State agencies and divisions of state agencies shall not be assessed building rental fees as noted in this subrule for meetings of an official nature during regular business hours.

(2) **Rental contract.** In accordance with 450—1.6(6), the society may refuse to rent the facility for purposes that would be disruptive to official state business or the public health and welfare. Unlawful activity is prohibited.

The facility is inadequate for some forms of musical and theatrical entertainment. Questions may be referred to the Facilities Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-8864.

A contract for use of any part of the state historical building shall be executed seven days prior to the event. This contract shall identify, at a minimum, the group using the facility, purpose of the use, person or group legally responsible, rental fee to be assessed, security deposit all fees to be assessed, and exact date and time of the event. All contracts A contract shall be initiated with the facilities rental coordinator of the society and shall be approved by the administrator of the society or designee, the director of the department of cultural affairs or designee, and the director of the department of general services or designee.

(3) **Use of alcoholic beverages.** Alcoholic beverages may be served at functions in the state historical building if a fully approved alcoholic beverages application is executed seven days prior to the event. Application forms are available from the Facilities Coordinator, State Historical Society of Iowa,

## HISTORICAL DIVISION[223](cont'd)

Capitol Complex, Des Moines, Iowa 50319, (515)281-8864. In addition to the information required in the rental contract, this *This* application shall attest that all laws of the state of Iowa and the city of Des Moines pertaining to alcoholic beverages shall *will* be obeyed and that all liability rests with the group using the facility. All alcoholic beverage service shall be provided by the blind commission vendor who operates the Terrace Cafe licensee designated by the department of cultural affairs.

(4) ~~Liability.~~ All individuals and groups renting the facility for any use shall agree in writing to abide by the "hold harmless" clause specified in both the facility contract and the application to serve alcoholic beverages, if applicable. This clause states: "It is hereby agreed by and between the parties that the renter requesting use of the state historical building, Des Moines, shall be entirely and solely responsible for its acts and the acts of its agents and employees while engaged in activities at the state historical building as covered by this agreement. The renter agrees for itself, successors, or assigns to indemnify and hold harmless the state historical society of Iowa and the state of Iowa absolutely and without limit against all claims, demands, suits, or judgments asserted, made, or recovered by any or all persons on account of the negligent acts or omissions of the renter, its agents or employees (including liability under Iowa Code section 123.92—dramshop Act), arising out of the use of the state historical building as herein provided. The renter further agrees to abide strictly by the rules governing the use of the facilities. The undersigned also understands that the state historical society of Iowa reserves the right to change or cancel this contract with five working days' notice prior to the scheduled date of the event."

All individuals or groups renting the facility shall be liable for all damage to the facility. The renter shall be billed for the cost of repairs, extraordinary cleaning, and, if necessary, the collection of costs.

(5) ~~Group tours~~ (4) *Programming.* Tours *Group tours* of the state historical building and educational tours related to exhibits *programming* are available. Educational tours of the library and archives are available only on a prearranged basis. All tours during normal business hours are without fee to individuals and groups. Prior scheduling is necessary *may be required* for all tours and *programming*. Tours scheduled for nonbusiness hours require a fee to cover costs incurred by the society for additional staff and facilities. All inquiries and *An inquiry about* arrangements for of a museum tours *tour* may be directed to the Tour Coordinator, State Historical Society of Iowa, Capitol Complex 600 East Locust Street, Des Moines, Iowa 50319, (515)281-5111. All inquiries and arrangements for library and archives tours may be directed to the State Archivist, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-5111.

~~e.—Building use—~~ *b.* Centennial Building, 402 Iowa Avenue, Iowa City, Iowa 52240, (319)335-3916.

(1) *Facilities available.* The society provides program services of the library and archives and the publications and education bureaus *bureau* at this location. Meeting rooms and other facilities are available for use by groups.

(2) *Group tours.* Educational tours of the library and archives are available only on a prearranged basis. All inquiries and *An inquiry about* arrangements for tours *a tour* may be directed to the Bureau Chief, Centennial Building, 402 Iowa Avenue, Iowa City, Iowa 52240, (319) 335-3916.

~~d.—Historic site use—~~ *c.* Abbie Gardner Sharp Cabin, Arnolds Park, Iowa 51331, (712)332-7248 or (515)281-7650.

(1) *Hours and days of operation.* Visitation is from Memorial Day weekend through Labor Day weekend. Days and hours of operation shall be posted in accordance with subrule 1.5(2).

(2) *Site protection.* This site is protected under guidelines established in the Abbie Gardner Sharp Cabin management plan in accordance with the Secretary of the Interior's Standards for Historic Preservation. Copies of the plan and applications for use of the site for research shall be available from the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-7650. All requests *A request* for research use of the site shall be *directed to the society.* *A research request shall be* reviewed by the historic sites coordinator and recommended for action to the administrator of the society within 30 days.

(3) *Parking.* Parking is permitted in designated areas at the site. No camping or picnicking shall be permitted at the site. Facilities for camping and picnicking exist nearby.

(4) *Pets.* Pets are not permitted in the buildings. All pets on the grounds shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.

(5) *Group tours.* Tours by groups shall be available on a prearranged basis. All inquiries for tours between Memorial Day and Labor Day may be directed to the Site Manager, Abbie Gardner Cabin, Arnolds Park, Iowa 51331, (712)332-7248. Requests for tours at other times shall be directed to the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515) 281-7650.

(6) *Private use by groups.* The facilities are available for use by historical and cultural interest groups. Fees may be charged for private use of the site. Applicable fees shall be posted at the site in accordance with subrule 1.5(3). All inquiries between Memorial Day and Labor Day may be directed to the Site Manager, Abbie Gardner Cabin, Arnolds Park, Iowa 51331, (712)332-7248. Requests for use at other times shall be directed to the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-7650.

(7) *Admission fee.* No admission fee shall be charged at the site.

~~e.—Historic site use—~~ *d.* American Gothic House, Eldon, Iowa 52554. Information concerning this site may be obtained from the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-7650.

(1) *Hours and days of operation.* No open public visitation exists for the facility. At all times the public may view the exterior of the house.

(2) *Site protection.* This site is protected by the society in accordance with the Secretary of the Interior's Standards for Historic Preservation. Copies of the guidelines and applications for use of the site shall be available from the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319 *society.*

(3) *Parking.* No public parking is provided at the site. Parking is permitted nearby.

(4) *Pets.* Pets are not permitted in the buildings. All pets on the grounds shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.

~~f.—Historic site use—~~ *e.* Blood Run National Historic Landmark, Lyon County, Iowa 51240, (515)281-7650.

## HISTORICAL DIVISION[223](cont'd)

(1) ~~Hours and days of operation.~~ No open public visitation exists for this site. All access shall be arranged on a guided basis through the site manager ~~( This site is managed by the Executive Director, Lyon County Conservation Board, RR 1, Box 44, Inwood, Iowa 51240, (712)753-2313) through a cooperative agreement with the society.~~

(2) ~~Site protection.~~ This site is protected under guidelines established in a law enforcement agreement between the society and the Lyon County Conservation Board and in accordance with the Secretary of the Interior's Standards for Historic Preservation. Copies of the guidelines and applications for use of the site for research shall be available from the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-7650.

(3) ~~All requests~~ A request for research use of the site shall be directed to the society. A research request shall be reviewed by the historic sites coordinator and recommended for action to the administrator of the state historical society of Iowa within 30 days.

~~g.~~ Historic site use—~~f.~~ Matthew Edel Blacksmith Shop, Haverhill, Iowa 50120, (515)281-7650.

(1) ~~Hours and days of operation.~~ Visitation is from Memorial Day weekend through Labor Day weekend. Days and hours of operation are posted in accordance with subrule 1.5(2).

(2) ~~1) Site protection.~~ The site is protected under guidelines established in cooperative agreements (28E) between the society, the Historical Society of Marshall County and the city of Haverhill in accordance with the Secretary of the Interior's Standards for Historic Preservation. Copies of the guidelines and applications for use of the site for research shall be available from the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-7650. All requests for research use of the site shall be A request for research use of the site shall be directed to the society. A research request shall be reviewed by the historic sites coordinator and recommended for action to the administrator of the society within 30 days.

(3) ~~Parking.~~ Parking shall not be permitted at the site. Public parking is available nearby. Picnicking is permitted at the site. Camping shall not be permitted.

(4) ~~Pets.~~ Pets shall not be permitted in the buildings. All pets on the grounds must be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.

(5) ~~Group tours.~~ Tours by groups shall be available only on a prearranged basis. All inquiries shall be directed to the Site Manager, Historical Society of Marshall County, Box 304, Marshalltown, Iowa 50158, (515)752-6664.

(6) ~~2) Private use by groups.~~ The historic structures shall be available for use by historical and cultural interest groups. Picnicking is permitted at this site. A shelter house is available. Arrangements for use of the shelter house may be made by contacting the City Council, Haverhill, Iowa 50120, (515) 475-3438.

(7) ~~Admission fee.~~ No admission fee shall be charged at the site.

~~h.~~ Historic site use—~~g.~~ Montauk, Union Sunday School, Clermont Museum, Clermont, Iowa 52135, (319)423-7173.

(1) ~~Hours and days of operation.~~ Montauk, Governor William Larabee's mansion, is open from Memorial Day weekend through October 31. The Clermont Museum and the Union Sunday School are open only by prior arrangement with the Site Manager, Montauk, Clermont, Iowa 52135,

(319)423-7173. Days and hours of operation are posted in accordance with subrule 1.5(2).

(2) ~~1) Site protection.~~ Montauk is a state preserve. Management complies with all provisions of Iowa Code chapter 111B 465C, and 575—Chapter 2, Iowa Administrative Code, and the articles of dedication for Montauk as a state preserve. In addition to these protections, the society requires that researchers wishing to use the site secure approval from the society. Applications for research use of the site shall be submitted in writing to the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-7650. All requests shall be A request for research use of the site shall be directed to the society. A research request shall be reviewed by the site manager and the historic sites coordinator and recommended for action to the administrator of the society within 30 days.

(3) ~~Parking.~~ Parking is permitted at the sites in designated areas. No camping or picnicking shall be permitted at the sites. Facilities for camping and picnicking exist nearby.

(4) ~~Pets.~~ Pets are not permitted in the buildings. All pets on the grounds shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.

(2) ~~Hunting shall not be permitted on this site.~~

(5) ~~3) Group tours.~~ Tours of all facilities Montauk, Union Sunday School, and Clermont Museum shall be available on a prearranged basis. All inquiries for tours An inquiry about arrangements for a tour may be directed to the Site Manager, Montauk, Clermont, Iowa 52135, (319)423-7173.

(6) ~~4) Private use by groups.~~ The facilities are may be available on a prearranged basis for use by historical and cultural interest groups. Fees may be charged for private use of the sites. Applicable fees shall be posted at the site in accordance with subrule 1.5(3). All inquiries An inquiry may be directed to the Site Manager, Montauk, Clermont, Iowa 52135, (319)423-7173.

(7) ~~Admission fee.~~ An admission fee is charged at Montauk. The fee schedule shall be posted at the site in accordance with subrule 1.5(3). Inquiries concerning fees may be directed to the Site Manager, Montauk, Clermont, Iowa 52135, (319)423-7173.

~~i.~~ Historic site use—~~h.~~ Plum Grove, Iowa City, Iowa 52240, (515)281-7650. Information concerning this site can be obtained from the site manager at the Johnson County Historical Society, 310 5th Street, Coralville, Iowa 52241, (319) 351-5738.

(1) ~~Hours and days of operation.~~ Visitation is from Memorial Day weekend through Labor Day weekend. Days and hours of operation shall be posted in accordance with subrule 1.5(2).

(2) ~~1) Site protection.~~ The site is protected under guidelines established in a cooperative agreement between the society and the Johnson County Historical Society and in accordance with the Secretary of the Interior's Standards for Historic Preservation. Copies of the guidelines and applications for use of the site shall be available from the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319. All requests for research use of the site shall be A request for research use of the site shall be directed to the society. A research request shall be reviewed by the historic sites coordinator and recommended for action to the administrator of the society within 30 days.

(3) ~~Parking.~~ Parking is available at the site. (2) Picnicking is permitted at the site. Camping shall not be permitted.

## HISTORICAL DIVISION[223](cont'd)

(4) ~~Pets. Pets shall not be permitted in the buildings. All pets on the grounds shall be on a leash and under the direct supervision of the owner. The owner shall assume all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.~~

(5 3) ~~Group tours. Tours by groups shall be available only on a prearranged basis. All inquiries for tours *An inquiry about arrangements for a tour* shall be directed to the Site Manager, Johnson County Historical Society, 310 5th Street, Coralville, Iowa 52241, (319)351-5738.~~

(6 4) ~~Private use by groups. The facilities are may be available on a prearranged basis for use by historical and cultural interest groups. Fees may be charged for private use of the sites. Applicable fees shall be posted at the site in accordance with subrule 1.5(3). All inquiries *An inquiry* may be directed to the Site Manager, Johnson County Historical Society, 310 5th Street, Coralville, Iowa 52241, (319)351-5738.~~

(7) ~~Admission fee. No admission fee shall be charged at the site.~~

j.—~~Historic site use— i. Toolesboro Indian Mounds National Historic Landmark, Toolesboro, Iowa 52653. Information concerning this site can be obtained from the site manager at the Louisa County Conservation Board, Box 261, 601 Highway 61 North, Wapello, Iowa 52653, (319)523-8351.~~

(1) ~~Hours and days of operation. Visitation is from Memorial Day weekend to Labor Day weekend. Days and hours of operation shall be posted in accordance with subrule 1.5(2).~~

(2 1) ~~Site protection. Toolesboro Indian Mounds National Historic Landmark is a state preserve. Management complies with all provisions of Iowa Code chapter 414B 465C, and 575—Chapter 2, Iowa Administrative Code, and the articles of dedication for Toolesboro Indian Mounds National Historic Landmark as a state preserve. In addition to these protections the society requires that researchers wishing to use the site secure approval from the society. Applications for research use of the site shall be submitted in writing to the Historic Sites Coordinator, State Historical Society of Iowa, Capitol Complex, Des Moines, Iowa 50319, (515)281-7650. All requests *A request for research use of the site* shall be directed to the society. A research request shall be reviewed by the historic sites coordinator and recommended for action to the administrator of the society within 30 days.~~

(3) ~~Parking. Parking is permitted in designated areas at the site. No camping or picnicking shall be permitted at the site. Facilities for camping and picnicking are available near the site.~~

(4) ~~Pets. Pets shall not be permitted in the buildings. All pets on the grounds shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.~~

(5 2) ~~Group tours. Tours by groups are available on a prearranged basis. All inquiries *An inquiry* may be directed to the Site Attendant, Toolesboro Indian Mounds National Historic Landmark, Toolesboro, Iowa 52653, (319)523-8351 *Louisa County Conservation Board, Box 261, 601 Highway 61 North, Wapello, Iowa 52653.*~~

(6) ~~Private use by groups. The facilities are available on a prearranged basis for use by historical and cultural interest groups. Fees may be charged for private use of the site. Applicable fees shall be posted at the site in accordance with subrule 1.5(3). All inquiries shall be directed to the Site Manager, Louisa County Conservation Board, Box 261, 601 Highway 61 North, Wapello, Iowa 52653, (319)523-8351.~~

(7) ~~Admission fee. No admission fee shall be charged at the site.~~

k.—~~Historic site use— j. Western Historic Trails Center, Council Bluffs, Iowa 51501, (712)366-4900.~~

(1) ~~Hours and days of operation. Visitation is daily except New Year's Day, Thanksgiving, and Christmas Day. Hours of operation are posted in accordance with subrule 1.5(2).~~

(2 1) ~~Parking. Parking is permitted in designated areas at the site. No overnight parking and no camping shall be permitted at the site without written approval by the site manager.~~

(3) ~~Pets. Pets are not permitted in the building. All pets on the grounds shall be on a leash and under the direct supervision of the owner. The owner assumes all liability for pets brought onto the grounds. Seeing Eye dogs shall be exempt from these restrictions.~~

(4 2) ~~Group tours. Tours by groups, during normal days and hours of operation, shall be available on a prearranged basis. All inquiries for tours *An inquiry about arrangements for a tour* shall be directed to the Site Manager, Western Historic Trails Center, 3434 Richard Downing Avenue, Council Bluffs, Iowa 51501, (712)366-4900.~~

(3) ~~Private use by groups. The facilities may be available on a prearranged basis for use by historical and cultural interest groups. An inquiry may be directed to the Site Manager, Western Historic Trails Center, 3434 Richard Downing Avenue, Council Bluffs, Iowa 51501.~~

(5 4) ~~Admission fee. No admission fee shall be charged at the site.~~

**223—1.6(303) Board of trustees.**

**1.6(1)** ~~Function. The function of the society board of trustees is to advise the administrator of the society and to stimulate interest in the history of Iowa among the general public, as well as other functions which *that* are not contrary to the Iowa Code.~~

**1.6(2)** ~~Composition. Two categories of membership exist for the board of trustees—elected and appointed:~~

a. ~~Elected members. In compliance with Iowa Code subsection 303.4(1), three members of the board of trustees shall be elected *annually*. The board of trustees shall establish written procedures for the conduct of the election. These members shall serve three-year, staggered terms of office. A society member may nominate a candidate by contacting the administrator.~~

~~The society board of trustees shall provide all society members with a written call for nominations at least 30 days before the board prepares a slate of candidates. The board shall provide up to three candidates per vacancy from the nominations and shall create and mail a ballot to all society members, establishing at least a 30-day period of voting. A space shall be provided on all ballots for write-in candidates. Each member of the society shall be entitled to one vote regardless of membership category. The board shall set a deadline for the postmarking of all ballots and shall accept no ballots postmarked after the deadline. Ballots shall be counted and reported to the society board of trustees by the secretary to the board and one person appointed by the chair of the board, who shall be neither a member of the society board of trustees nor an employee of the society. Elections shall take place between January 1 and June 30 during the year in which the vacancy occurs. The member-elect shall take office on July 1 following the election. *Elected board members shall serve three-year, staggered terms of office. Terms of office shall begin on May 1, consistent with Iowa Code section 69.19.*~~



## HISTORICAL DIVISION[223](cont'd)

b. Appointed members. In compliance with Iowa Code subsection 303.4(2 *1*), the governor shall appoint nine members to the board. Terms of office shall be *in accordance with Iowa Code subsection 303.4(2)* and consistent with Iowa Code section 69.19.

**1.6(3) Officers.** Pursuant to Iowa Code section 303.6, the board of trustees of the society shall annually elect a chairperson and a vice chairperson from its membership. The administrator of the society serves as secretary to the board of trustees. Election of officers shall be held annually at the first meeting of the board following the installation of new members. Election is by a two-thirds vote of all board members.

**1.6(4) Meetings.** The board of trustees shall meet at least four times per year ~~according to~~ *in accordance with* a schedule established by the board. ~~The quorum necessary to conduct business shall be a~~ A two-thirds majority of all members ~~of the board shall constitute a quorum to conduct business.~~ All meetings are open to the public under Iowa Code chapter 21, and ~~in accordance with Robert's Rules of Order, Revised Edition.~~ Public notice of all meetings shall be distributed to the news media. The tentative agenda for meetings shall be posted in society facilities 24 hours prior to commencement of any meeting ~~posted~~ in accordance with Iowa Code chapter 21.

**1.6(5) Committees—appointment.** Committees of the board of trustees may be appointed on an ad hoc basis by the chairperson of the board. Nonboard members may be appointed to committees.

**1.6(6) Conflict of interest.**

a. Definitions. The following definitions apply in this subrule:

“Affinity” means the relationship of a spouse.

“Consanguinity of the second degree” means a blood relationship of the second degree such as a brother/sister, grandparent, grandchild.

“Contract” means any claim, account, job of work, *grant application*, provision of materials, or manuscript submitted for remuneration.

b. ~~Board members shall not have an interest, either direct or indirect, personally or by affinity, in any contract in which the society is or might become a party.~~

c. ~~Notwithstanding paragraph “b” above, the~~ *b.* A board member who has ~~the~~ *an* interest, either direct or indirect, within the second degree of consanguinity ~~of the second degree~~, in any contract in which the society is or might become a party shall disclose the interest to the board. The interest shall be noted in the minutes of a board meeting. When the contract requires board action, the affected member shall not participate in any discussion or action by the board with respect to the contract. The affected member shall be disqualified from voting on the contract issue by reason of the conflict. The quorum of the board shall not be changed as the result of a conflict of interest disqualification.

**223—1.7(303) Gifts, bequests, endowments.** The department of cultural affairs, acting on behalf of the society, may accept private gifts, bequests, and endowments with such gifts credited to the account of the society. *Gifts Accepted gifts*, bequests, and endowments shall be used in accordance with the desire of the donor as expressed at the time of the donation. Undesignated funds shall be credited to the ~~society's general fund~~ *society* and used for projects and activities of the society as recommended by the administrator of the society. *Gifts may be deposited directly into the account of the society, or, in accordance with Iowa Code section 303.7(4), the society may enter into an agreement with a nonprofit cor-*

*poration to accept and manage gifts, bequests and endowments.*

**223—1.8(303) Public and private grants and donations.** The department of cultural affairs, acting on behalf of the society, may apply for and receive funds from public and private sources. Receipts from these grants shall be credited to the account of the society and used in accordance with the stipulation of the grants contract. *In accordance with Iowa Code section 303.7(4), the society may enter into an agreement with a nonprofit corporation to accept public and private grants and donations.*

**223—1.9(303) Sale of mementos.** The department of cultural affairs, acting on behalf of the society, may sell mementos or other items relating to Iowa and its history *and culture* at its *the society's* facilities.

~~**1.9(1) Private vendors.** The department of cultural affairs, acting on behalf of the society, may enter into rental and lease agreements with private vendors for the purpose of selling mementos. Selection of vendors shall be approved by the director of the department of cultural affairs, or designee, upon recommendation of the administrator of the society, following the bid process established by Iowa Code section 18.6. Private vendors leasing retail space from the society shall consult with a review committee appointed by the administrator of the society. The purpose of the review committee shall be to ensure that the items offered for sale properly reflect the mission of the society.~~

~~**1.9(1) Operator of gift shops.** The society may enter into an agreement with a nonprofit corporation for the operation of gift shops, including facilities, merchandise, and promotion. The society shall require an accounting of all receipts and expenditures of the gift shops.~~

~~**1.9(2) Income.** All income derived from rental or lease agreements, sales, and fees shall be deposited with the state treasurer and credited to the society as provided in Iowa Code section 303.9. Net proceeds from rental, lease, sale, and fees shall be deposited into the account of the society.~~

These rules are intended to implement Iowa Code sections 303.1A, 303.2 and 303.4 to 303.18.

## ARC 3271B

HOMELAND SECURITY AND  
EMERGENCY MANAGEMENT  
DIVISION[605]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division proposes to amend Chapter 10, “Enhanced 911 Telephone Systems,” Iowa Administrative Code.

The Homeland Security and Emergency Management Division is amending paragraph 10.9(3)“b” to further define eligible costs that a wireless service provider may recover from the Wireless E911 Emergency Communications Fund for providing wireless E911 service.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

Consideration will be given to all written suggestions or comments on the proposed amendment on or before April 20, 2004. Such written materials should be sent to the E911 Program Manager, Iowa Homeland Security and Emergency Management Division, Hoover State Office Building, Des Moines, Iowa 50319; fax (515)281-7539.

Also, there will be a public hearing on April 27, 2004, at 1 p.m. in the Homeland Security and Emergency Management Division Conference Room of the Hoover State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Division and advise of specific needs.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 3272B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code chapter 34A.

**ARC 3274B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 229A.15B, the Department of Human Services proposes to amend Chapter 7, “Appeals and Hearings,” Iowa Administrative Code.

This amendment clarifies that a patient in the Civil Commitment Unit for Sexual Offenders who appeals a patient treatment intervention outlined in the institution’s patient handbook will not be granted a hearing. This policy is consistent with policies in effect at the mental health institutes. The Department believes that questions about treatment intervention are best worked out with the treatment staff as part of the therapeutic program. Patients retain the right to seek legal redress in district court.

A technical change in the same subrule eliminates an obsolete reference.

This amendment does not provide for waivers in specified situations. Patients who believe that they are disadvantaged by this rule may request a waiver under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendment on or before April 21, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Iowa Code chapter 229A.

The following amendment is proposed.

Amend subrule **7.5(2)** as follows:

Amend paragraph “a” by adopting the following **new** subparagraph (17):

(17) The appeal involves patient treatment interventions outlined in the patient handbook of the civil commitment unit for sexual offenders.

Amend paragraph “f” as follows:

f. The sole basis for denying, terminating or limiting assistance under 441—Chapter 47, ~~Division I, II, III, or IV,~~ or 441—Chapter 58 is that funds for the respective programs have been reduced, exhausted, eliminated or otherwise encumbered.

**ARC 3259B****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, “Boating Speed and Distance Zoning,” Iowa Administrative Code.

This amendment will prohibit the mooring of vessels between the hours of sunset and sunrise on riparian property of the state of Iowa, where signs have been posted by the Department.

Any person may make written comments on this proposed amendment on or before April 20, 2004. Such written material should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, 502 East Ninth, Des Moines, Iowa 50319-0034. Persons who wish to convey their views orally should contact Steve Derrand of the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on April 20, 2004, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code section 456A.24.

The following amendment is proposed.

Amend 571—Chapter 40 by adding the following **new** rule:

**571—40.49(462A) Mooring of vessels on riparian property of the state of Iowa.** Where the state of Iowa owns riparian property adjacent to sovereign land or water, mooring of vessels is prohibited between the hours of sunset and sunrise on those riparian or sovereign lands or waters where posted by either official buoys or official signs of the department of natural resources.

**ARC 3260B****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, “State Parks and Recreation Areas,” Iowa Administrative Code.

This amendment increases cabin rental fees in five state parks due to various renovations and facility upgrades.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 20, 2004. Such written materials should be directed to the State

Parks Bureau, Department of Natural Resources, 502 East Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Division at (515)242-6233 or TDD (515)242-5967 or at the Division offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 20, 2004, at 1:30 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 461A.3, 461A.47, and 461A.57.

The following amendment is proposed.

Amend subrule **61.4(1)**, paragraph “a,” as follows:

a. Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

	<u>Per Night*</u>	<u>Per Week</u>
Backbone State Park, Delaware County		
Renovated cabins	\$ 50	\$300
Two-bedroom cabins	85	510
Deluxe cabins	100	600
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	<del>30</del> 35	<del>180</del> 210
Lacey-Keosauqua State Park, Van Buren County	50	300
Lake Darling State Park, Washington County	<del>25</del> 35	<del>150</del> 210
Lake of Three Fires State Park, Taylor County	50	300
Lake Wapello State Park, Davis County (Cabin Nos. 1-12)	60	360
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510
Lake Wapello State Park, Davis County (Cabin No. 14)	75	450
Palisades-Kepler State Park, Linn County	<del>30</del> 50	<del>180</del> 300
Pine Lake State Park, Hardin County		
Sleeping-area cabins (four-person occupancy limit)	50	300
One-bedroom cabins	65	390
Pleasant Creek State Recreation Area, Linn County	25	150
Springbrook State Park, Guthrie County	<del>30</del> 35	<del>180</del> 210
Wilson Island State Recreation Area, Pottawattamie County	25	150
Extra cots, where available	1	

\*Minimum two nights

**ARC 3258B****NATURAL RESOURCE  
COMMISSION[571]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 481B.3, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 77, “Endangered and Threatened Plant and Animal Species,” Iowa Administrative Code.

These rules list the threatened and endangered plant and animal species and exemptions. The proposed amendment to the list of exemptions protects private landowners that voluntarily implement conservation measures for listed species. The landowner incentive program is a cost-share program that provides private landowners with 75 percent of the cost to implement various land management practices that benefit listed plant and animal species. If the population of one or more listed species increases during the time when a landowner incentive program agreement is in effect, the landowner will not be required to commit additional resources to maintain the population above the level that was specified in the agreement. Also, after the expiration of the agreement, a landowner will only be responsible for maintaining populations and habitat at the estimated level (baseline) at the time the agreement was signed or a mutually agreed-upon level above the baseline.

## NATURAL RESOURCE COMMISSION[571](cont'd)

Any interested person may make written comments on the proposed amendment on or before April 22, 2004. Such written material should be directed to the Division of Conservation and Recreation, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034, fax (515)281-6794. Persons who wish to convey their views orally should contact the Endangered Species Program at (515)281-8524 or at the program offices on the fourth floor of the Wallace State Office Building on or before the above date.

Also, there will be a public hearing on April 22, 2004, at 10 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building in Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 481B.

The following amendment is proposed.

Amend rule 571—77.4(481B) by adopting the following **new** subrule:

**77.4(9)** The department may enter into an agreement with a private landowner for habitat improvements that benefit endangered and threatened species while limiting the potential impacts to the landowner arising when a covered species becomes more numerous due to the voluntary improvements to the habitat. If any covered species becomes more numerous as a result of the landowner's voluntary actions, a private landowner who commits to implement voluntary conservation measures for a listed species will not be required to implement additional measures, and additional land, water, or resource use restrictions will not be imposed.

a. The department will provide participating landowners with technical assistance to develop landowner incentive program agreements. Each agreement shall include the following:

1. Landowner's name.
2. Legal description of the property covered by the agreement.
3. Length of agreement period.
4. Species covered by the agreement.
5. Baseline conditions: the estimated number of listed species and the size and condition of habitat for each species covered.
6. Conservation measures to be implemented and implementation schedule.
7. Financial commitment of the department and the landowner.
8. Measures to determine if the agreement has been fulfilled.
9. Any property use restrictions.
10. Terms for the termination of the agreement prior to its scheduled expiration.

b. The landowner, through normal lawful activities, may return the property to the baseline or a mutually agreed-upon condition above the baseline at any time after expiration of the landowner incentive program agreement.

## ARC 3241B

PHARMACY EXAMINERS  
BOARD[657]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 3, “Pharmacy Technicians,” Iowa Administrative Code.

The amendments were approved at the October 14, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments require that a licensed health care provider who assists in the technical functions of the practice of pharmacy, except a pharmacist-intern, register as a pharmacy technician. The amendments authorize the Executive Secretary/Director of the Board to deny, for specified reasons, an application for registration as a pharmacy technician and provide for appeal to the Board for reconsideration of an application within 30 days of notice of denial by the Executive Secretary/Director.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on April 20, 2004. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code section 155A.6.

The following amendments are proposed.

ITEM 1. Amend rule 657—3.3(155A) by adding the following **new** subrule 3.3(1) and renumbering current subrules **3.3(1)** through **3.3(3)** as **3.3(2)** through **3.3(4)**:

**3.3(1)** Licensed health care provider. Except as provided in rule 3.4(155A), a licensed health care provider whose registration or license is in good standing with the licensee's professional licensing board and who assists in the technical functions of the practice of pharmacy shall be required to register as a pharmacy technician pursuant to these rules.

ITEM 2. Amend rule 657—3.4(155A) as follows:

**657—3.4(155A) Registration not required.** A pharmacist-intern or a licensed health care provider whose registration or license is in good standing and who assists in the technical functions of the practice of pharmacy is not required to register as a pharmacy technician.

ITEM 3. Amend rule 657—3.29(155A) as follows:

**657—3.29(155A) Denial of registration.** The board executive secretary/director or designee may deny an application for registration as a pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances or nonpre-

## PHARMACY EXAMINERS BOARD[657](cont'd)

scription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

*An individual whose application for registration as a pharmacy technician is denied pursuant to this rule may, within 30 days after issuance of the notice of denial, appeal to the board for reconsideration of the application.*

**ARC 3237B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Termination**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 6, 2003, as **ARC 2646B**, proposing to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The Notice proposed to identify specific requirements for labeling of a prescription medication container when the pharmacist dispenses a brand name drug product for a generic drug product ordered by the prescriber.

The Board is terminating the rule making commenced in **ARC 2646B** based on comments received from pharmacists indicating that the proposed amendment could adversely impact the operations and practices of Iowa pharmacies and pharmacists and does not confer sufficient benefit to override these concerns. The Board has issued a new Notice of Intended Action regarding the proposed amendment to incorporate changes and clarifications to requirements and responsibilities under this chapter. The Notice of Intended Action is published herein as **ARC 3242B**.

**ARC 3242B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment was approved at the December 2, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment identifies requirements for dual labeling of a prescription drug container when the pharmacist dispenses a brand name drug product for a generic product ordered by the prescriber. In addition, the proposed amendment eliminates the requirement to use specific language on the label of a prescription drug container to dually identify a generic drug product substituted for a brand name product ordered by the prescriber.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on April 20, 2004. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

This amendment is intended to implement Iowa Code sections 124.301, 155A.28, and 155A.32.

The following amendment is proposed.

Amend subrule **6.10(1)**, paragraph "g," as follows:

g. Unless otherwise directed by the prescriber, the label shall bear the name, strength, and quantity of the drug dispensed.

(1) If a pharmacist selects an equivalent drug product for a brand name drug product prescribed by a practitioner, the prescription container label shall identify the generic drug and may identify the brand name drug for which the selection is made. ~~The dual identification allowed under this paragraph shall take the form of the following statement on the drug container label: , such as~~ "(generic name) Generic for (brand name product)."

(2) *If a pharmacist selects a brand name drug product for a generic drug product prescribed by a practitioner, the prescription container label shall identify the brand name drug product dispensed and may identify the generic drug product ordered by the prescriber, such as "(brand name product) for (generic name)";*

**ARC 3243B****PHARMACY EXAMINERS  
BOARD[657]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendments were approved at the December 2, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments clarify the requirements for transmission of a prescription drug order to the pharmacy by an authorized prescriber's agent. In addition, the proposed amendments prohibit the dispensing of a prescription drug if the pharmacist knows or should have known that the order was issued solely on the basis of an Internet questionnaire or telephone consultation and without a valid preexisting patient-practitioner relationship.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not

## PHARMACY EXAMINERS BOARD[657](cont'd)

later than 4:30 p.m. on April 20, 2004. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code sections 124.308, 155A.23, 155A.27, and 205.3.

The following amendments are proposed.

ITEM 1. Amend subrule 8.19(2) as follows:

**8.19(2)** Transmitting agent. The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally or by ~~electronic~~ *facsimile* transmission provided that the ~~identity~~ *name* of the transmitting agent is included in the order.

ITEM 2. Amend subrule 8.19(4) as follows:

**8.19(4)** Legitimate purpose. The pharmacist shall ensure that the prescription drug or medication order, regardless of the means of transmission, has been issued for a legitimate medical purpose by an authorized practitioner acting in the usual course of the practitioner's professional practice. *A pharmacist shall not dispense a prescription drug if the pharmacist knows or should have known that the prescription was issued solely on the basis of an Internet-based questionnaire, an Internet-based consultation, or a telephonic consultation and without a valid preexisting patient-practitioner relationship.*

## ARC 3244B

PHARMACY EXAMINERS  
BOARD[657]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment was approved at the December 2, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment adds reverse distributors to the list of business entities required to maintain a registration pursuant to the Iowa Uniform Controlled Substances Act.

This rule does not provide for waiver or variance. Iowa Code section 124.302 requires registration of every person who distributes controlled substances within Iowa.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on April 20, 2004. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

This amendment is intended to implement Iowa Code section 124.302.

The following amendment is proposed.

Amend rule **657—10.1(124)**, first unnumbered paragraph, as follows:

Manufacturers, distributors, *reverse distributors*, importers and exporters, individual practitioners (M.D., D.O., D.D.S., D.V.M., D.P.M., O.D., P.A., resident physician, advanced registered nurse practitioner), pharmacies, hospitals and animal shelters, care facilities, researchers and dog trainers, analytical laboratories, and teaching institutions shall register on forms provided by the board office. To be eligible to register, individual practitioners must hold a current, active license in good standing, issued by the appropriate Iowa professional licensing board, to practice their profession in Iowa.

## ARC 3245B

PHARMACY EXAMINERS  
BOARD[657]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The amendments were approved at the December 2, 2003, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments clarify the meaning of a computer-to-computer transmission of a prescription drug order and require that only an authorized prescriber initiate a computer-to-computer transmission of a prescription drug order.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on April 20, 2004. Such written materials should be sent to Terry Witkowski, Administrative Assistant, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to [terry.witkowski@ibpe.state.ia.us](mailto:terry.witkowski@ibpe.state.ia.us).

These amendments are intended to implement Iowa Code sections 124.308 and 155A.27.

The following amendments are proposed.

ITEM 1. Amend rule 657—21.8(124,155A), introductory paragraph, as follows:

**657—21.8(124,155A) Computer-to-computer transmission of a prescription.** Prescription drug orders, excluding orders for controlled substances, may be communicated directly from a prescriber's computer to a pharmacy's computer *prescription processing system* by electronic transmission.

ITEM 2. Amend subrule 21.8(3) as follows:

**21.8(3)** Who may transmit. Orders shall be ~~transmitted~~ *initiated* only by an authorized prescriber ~~or the prescriber's agent~~ and shall include the prescriber's electronic signature.

**ARC 3234B****PROFESSIONAL LICENSURE  
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Dietetic Examiners hereby gives Notice of Intended Action to amend Chapter 81, “Licensure of Dietitians,” and Chapter 84, “Fees,” Iowa Administrative Code.

These proposed amendments adopt new subrules for licensure renewal, application requirements, and criteria and fees for obtaining a duplicate or reissued license and wallet card. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting.

Any interested person may make written comments on the proposed amendments no later than April 20, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 20, 2004, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152A and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule **81.4(4)**, paragraphs “b” and “c,” as follows:

b. ~~A notarized copy of the Commission on Dietetic Registration (CDR) card has been received by the board; and Official verification statements from the didactic and internship or preprofessional practice programs have been sent to the board; and~~

c. The applicant satisfactorily completes the registration examination for dietitians administered by the Commission on Dietetic Registration. The board will accept the passing score set by the Commission on Dietetic Registration. *Verification of satisfactory completion may be established by sending a notarized copy of the Commission on Dietetic Registration (CDR) card or an official letter sent directly from CDR to the board to verify that the applicant holds registration status.*

ITEM 2. Rescind subrule **81.4(6)** and renumber subrule **81.4(7)** as **81.4(6)**.

ITEM 3. Rescind rule 645—81.9(152A) and adopt the following **new** rule in lieu thereof:

**645—81.9(152A) License renewal.**

**81.9(1)** The biennial license renewal period for a license to practice dietetics shall begin on the sixteenth day of the licensee’s birth month and end on the fifteenth day of the li-

censee’s birth month two years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay the biennial renewal fees on or before the renewal date.

**81.9(2)** An initial license issued by the board may be valid for an 18- to 29-month period. When an initial license is renewed, it will be placed on a two-year renewal period identified in subrule 81.9(1).

**81.9(3)** A licensee shall:

a. Meet the continuing education requirements of rule 645—82.2(152A) and the mandatory reporting requirements of subrule 81.9(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

**81.9(4)** Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee’s employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph “e.”

Training may be completed through separate courses as identified in paragraphs “a” and “b” or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs “a” to “c,” including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 82.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

**81.9(5)** When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

**81.9(6)** A person licensed to practice dietetics shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**81.9(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 84.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 4. Renumber rules **645—81.11(272C)** and **645—81.12(272C)** as **645—81.13(272C)** and **645—81.14(272C)** and adopt the following new rules:

**645—81.11(147) Duplicate certificate or wallet card.**

**81.11(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

**81.11(2)** A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—84.1(147,152A).

**81.11(3)** If the board receives a completed application for a duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

**645—81.12(147) Reissued certificate or wallet card.** The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—84.1(147,152A).

ITEM 5. Amend subrule 84.1(5) as follows:

**84.1(5)** Duplicate *or reissued* license *certificate* fee is \$10.

ITEM 6. Renumber subrules **84.1(6)** to **84.1(8)** as **84.1(7)** to **84.1(9)** and adopt the following new subrule:

**84.1(6)** Duplicate or reissued wallet card fee is \$10.

## ARC 3233B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Examiners for Massage Therapy hereby gives Notice of Intended Action to amend Chapter 130, “Administrative and Regulatory Authority for the Board of Examiners for Massage Therapy,” Chapter 131, “Licensure of Massage Therapists,” and Chapter 132, “Massage Therapy Education Curriculum”; to rescind Chapter 134, “Disciplinary Procedures for Massage Therapists,” and adopt a new Chapter 134, “Discipline for Massage Therapists”; and to amend Chapter 135, “Fees,” Iowa Administrative Code.

These proposed amendments adopt new subrules for the conduct of persons who attend public meetings, amend requirements for notifying the Board of name and address changes, clarify the education curriculum, and set forth criteria and fees for obtaining a duplicate or reissued license certificate and wallet card. Licensees who regularly examine, attend, counsel or treat adults or children will be required to document at the time of renewal that they have completed the mandatory training on abuse identification and reporting. These proposed amendments also adopt a new discipline chapter.

Any interested person may make written comments on the proposed amendments no later than April 20, 2004, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on April 20, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendments are proposed.

ITEM 1. Amend subrules 130.4(2) and 130.4(3) as follows:

**130.4(2)** Notice of change of address. Each licensee shall notify the board ~~in writing~~ of a change of the licensee’s current mailing address within 30 days after the change of address occurs.

**130.4(3)** Notice of change of name. Each licensee shall notify the board *in writing* of ~~any~~ a change of name within 30 days after changing the name. ~~Notification requires a notarized copy of a marriage license or a notarized copy of court documents.~~

ITEM 2. Amend the parenthetical implementation for rule 645—130.6(17A) as follows:  
**645—130.6(17A 2I)**

ITEM 3. Adopt new subrules 130.6(3) and 130.6(4) as follows:

**130.6(3)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**130.6(4)** Cameras and recording devices may be used at open meetings provided the cameras and recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

ITEM 4. Amend the implementation clause for **645—Chapter 130** as follows:

These rules are intended to implement Iowa Code chapters 17A, 2I, 147, 152C and 272C.

ITEM 5. Rescind rule 645—131.8(152C) and adopt the following new rule in lieu thereof:

**645—131.8(152C) License renewal.**

**131.8(1)** The biennial license renewal period for a license to practice massage therapy shall begin on the sixteenth day of the anniversary month and end on the fifteenth day of the



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

anniversary month two years later. The board shall notify the licensee at the address on record at least 60 days prior to expiration of the license. Failure to receive the renewal application shall not relieve the license holder of the obligation to pay the biennial renewal fees on or before the renewal date.

**131.8(2)** An individual who was issued an initial license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses.

**131.8(3)** A licensee shall:

a. Meet the continuing education requirements of rule 645—133.2(152C) and the mandatory reporting requirements of subrule 131.8(4); and

b. Submit the completed renewal application, continuing education report form and renewal fee before the license expiration date.

**131.8(4)** Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 133.

f. The board may select licensees for audit of compliance with the requirements in paragraphs "a" to "e."

**131.8(5)** When all requirements for license renewal are met, the licensee shall be sent a wallet card by regular mail.

**131.8(6)** A person licensed to practice as a massage therapist shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

played in a conspicuous public place at the primary site of practice.

**131.8(7)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 135.1(4). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within 30 days following the expiration date on the wallet card.

ITEM 6. Renumber rule **645—131.11(17A,147,272C)** as **645—131.13(17A,147,272C)** and adopt the following new rules:

**645—131.11(147) Duplicate certificate or wallet card.**

**131.11(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

**131.11(2)** A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in rule 645—135.1(147).

**131.11(3)** If the board receives a completed application for duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

**645—131.12(147) Reissued certificate or wallet card.** The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in rule 645—135.1(147).

ITEM 7. Amend paragraph **132.4(1)"c,"** subparagraph **(1)**, numbered paragraph **"2,"** as follows:

2. 40 percent of the course of study for each specific massage technique if the school's curriculum is delivered via a modular format that has been approved by the board. The required 40 percent shall include client assessment skills, indications and contraindications for treatment and massage techniques. *Each massage technique employed in the clinical practicum must meet this requirement.*

ITEM 8. Amend subrule 132.4(3) as follows:

**132.4(3)** New course offerings shall not alter any minimum requirements and shall be approved by the board prior to implementation. *The school shall be subject to disciplinary action if the school fails to submit curriculum changes for approval.*

ITEM 9. Rescind 645—Chapter 134 and adopt the following new chapter in lieu thereof:

## CHAPTER 134

## DISCIPLINE FOR MASSAGE THERAPISTS

**645—134.1(152C) Definitions.**

"Board" means the board of examiners for massage therapy.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as a massage therapist in Iowa.

**645—134.2(152C,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—134.3(147,272C) when the board determines

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

that the licensee is guilty of any of the following acts or offenses:

**134.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**134.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a massage therapist in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

**134.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

**134.2(4)** Practice outside the scope of the profession.

**134.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**134.2(6)** Habitual intoxication or addiction to the use of drugs.

**134.2(7)** Obtaining, possessing, attempting to obtain or possess, prescribing, selling, giving away, or administering controlled substances without lawful authority.

**134.2(8)** Falsification of client records.

**134.2(9)** Acceptance of any fee by fraud or misrepresentation.

**134.2(10)** Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**134.2(11)** Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession which includes, but is not limited to, a felonious act which is so contrary to honesty, justice or good morals

and so reprehensible as to violate the public confidence and trust imposed upon the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**134.2(12)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**134.2(13)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**134.2(14)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**134.2(15)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**134.2(16)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**134.2(17)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**134.2(18)** Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

**134.2(19)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**134.2(20)** Failure to pay costs assessed in any disciplinary action.

**134.2(21)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**134.2(22)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**134.2(23)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a massage therapist.

**134.2(24)** Failure to report a change of name or address within 30 days after it occurs.

**134.2(25)** Representing oneself as a massage therapist when one's license has been suspended or revoked, or when one's license is lapsed or has been placed on inactive status.

**134.2(26)** Permitting another person to use the licensee's license for any purpose.

**134.2(27)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**134.2(28)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

a. Verbally or physically abusing a client or coworker.

b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.

c. Betrayal of a professional confidence.

d. Engaging in a professional conflict of interest.

e. Promotion for personal gain of an unnecessary drug, device, treatment, procedure, or service or directing or requiring an individual to purchase or secure a drug, device,

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

treatment, procedure, or service from a person, place, facility, or business in which the licensee has a financial interest.

**134.2(29)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**134.2(30)** Practicing the profession while the license is under suspension, lapsed or delinquent for any reason.

**645—134.3(147,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**645—134.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—134.5(152C) Civil penalties.**

**134.5(1)** Civil penalties may be imposed upon a person or business that employs an individual who is not licensed as a massage therapist. Civil penalties may be imposed upon a person or business that employs an individual who uses the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the employed person practices massage therapy but who is not licensed as a massage therapist. Failure to follow the above may result in:

- a. A civil penalty not to exceed \$1000 on a person or business that violates this rule:
  - (1) Each violation is a separate offense.
  - (2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;
- b. The board's inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;
- c. A citation being sent to the alleged violator by certified mail, return receipt requested; and
- d. The board's consideration of the following in determining civil penalties:

(1) Whether the amount imposed will be a substantial economic deterrent to the violation.

(2) The circumstances leading to or resulting in the violation.

(3) The severity of the violation and the risk of harm to the public.

(4) The economic benefits gained by the violator as a result of noncompliance.

(5) The welfare or best interest of the public.

**134.5(2)** Civil penalties may be imposed upon a person who is practicing as a massage therapist without a license. Civil penalties may be imposed upon a person who practices as an individual and uses the initials "L.M.T." or the words "licensed massage therapist," "massage therapist," "masseur," or "masseuse," or any other words or titles which imply or represent that the person practices massage therapy but is not licensed as a massage therapist. A person must be licensed as a massage therapist to practice in this state as a massage therapist. Failure to follow the above may result in:

a. A civil penalty not to exceed \$1000 on a person who violates this rule:

(1) Each violation is a separate offense.

(2) Each day a continued violation occurs after citation by the board is a separate offense with the maximum penalty not to exceed \$10,000;

b. The board's inspection of any facility which advertises or offers services purporting to be delivered by massage therapists;

c. A citation being sent to the alleged violator by certified mail, return receipt requested;

d. The board's consideration of the following in determining civil penalties:

(1) Whether the amount imposed will be a substantial economic deterrent to the violation.

(2) The circumstances leading to or resulting in the violation.

(3) The severity of the violation and the risk of harm to the public.

(4) The economic benefits gained by the violator as a result of noncompliance.

(5) The welfare or best interest of the public.

**134.5(3) Issuing an order or citation.**

a. The board shall provide a written notice and the opportunity to request a hearing on the record.

b. The hearing must be requested within 30 days of the issuance of the notice and shall be conducted according to Iowa Code chapter 17A.

c. The board may, in connection with a proceeding under this subrule, issue subpoenas to require the attendance and testimony of witnesses and the disclosure of evidence and may request the attorney general to bring an action to enforce the subpoena.

**134.5(4) Judicial review.**

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**134.5(5)** A person is not in violation of the statute or rules if that person practices massage therapy for compensation while in attendance at a school offering a curriculum meeting the requirements of 645—Chapter 132 and is under the supervision of a member of the school's faculty.

These rules are intended to implement Iowa Code chapters 147, 152C and 272C.

ITEM 10. Amend subrule 135.1(6) as follows:

**135.1(6)** Duplicate or reissued license certificate fee is \$10.

ITEM 11. Renumber subrules **135.1(7)** to **135.1(10)** as **135.1(8)** to **135.1(11)** and adopt the following new subrule:

**135.1(7)** Duplicate or reissued wallet card fee is \$10.

## ARC 3262B

## REGENTS BOARD[681]

## Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 262.9(3), the Board of Regents hereby gives Notice of Intended Action to amend Chapter 1, “Admission Rules Common to the Three State Universities,” and Chapter 2, “Supplemental Specific Rules for Each Institution,” Iowa Administrative Code.

The Board of Regents reviews recommendations from the Regents universities on an annual basis to add new fees or modify existing fees. These amendments will eliminate references to specific amounts for admission fees. Removing the references to specific fee amounts will eliminate the need to amend the rules when the fees are changed. The Board is required by Iowa Code section 262.9(18) to give 30 days' notice before increasing fees to the presiding officers of the student government organizations on each campus.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing which will be held Tuesday, April 20, 2004, at 3 p.m. in the offices of the Board of Regents, 11260 Aurora Avenue, Urbandale, Iowa 50322-7905. Comments may also be sent by E-mail to [pelliott@iastate.edu](mailto:pelliott@iastate.edu), or they may be submitted by fax to (515)281-6420.

Any interested person may make written comments on the proposed amendments no later than April 20, 2004, to Pam Elliott, Director of Business and Finance, at the address above or by E-mail or by fax.

These amendments are intended to implement Iowa Code chapter 262.

The following amendments are proposed.

ITEM 1. Amend rule 681—1.1(262), introductory paragraph and first unnumbered paragraph, as follows:

**681—1.1(262) Admission of undergraduate students directly from high school.** Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this section rule

and also any special requirements for the curriculum, school, or college of their choice.

Applicants must submit a formal application for admission, together with a ~~\$20~~ *the appropriate* application fee *as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) for U.S. citizens or permanent residents for applicants to Iowa State University and the University of Northern Iowa or a \$30 application fee for applicants to the University of Iowa and a \$50 application fee for foreign students, and have their secondary school provide a transcript of their academic record, including credits and grades, rank in class, and certification of graduation. Applicants must also submit scores from the American College Test (ACT) or the Scholastic Aptitude Test (SAT), or the equivalent, as determined by each university. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English. Applicants may be required to submit additional information or data to support their applications.*

ITEM 2. Amend rule 681—1.2(262), introductory paragraph and first unnumbered paragraph, as follows:

**681—1.2(262) Admission of undergraduate students by transfer from other colleges.** Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this section rule and also any special requirements for the curriculum, school, or college of their choice.

Applicants must submit a formal application for admission, together with a ~~\$20~~ *the appropriate* application fee *as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) for U.S. citizens or permanent residents for applicants to Iowa State University and the University of Northern Iowa or a \$30 application fee for applicants to the University of Iowa and a \$50 application fee for foreign students, and request that each college they have attended send an official transcript of record to the admissions office. High school academic records and standardized test results may also be required. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English.*

ITEM 3. Amend subrule 2.27(1) as follows:

**2.27(1) Admission.** Admission to the graduate college may be granted to a graduate of an institution in the United States which is accredited by a recognized regional association. For information concerning graduate study in a particular academic discipline, prospective students are invited to correspond with the head of the department in which they wish to study.

Application forms are available ~~from the Office of Admissions, 7 Beardshear Hall at <http://www.admissions.iastate.edu/>~~. These forms, together with official transcripts, *the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18)* and a statement of quartile rank, should be forwarded to the Office of Admissions at least one month prior to the opening of the quarter in which the student wishes to matriculate. ~~An application fee of \$10 is charged each applicant formally applying for admission to the graduate college.~~ If the undergraduate degree is from Iowa State University or if the student is applying for nondegree admission, no application fee is assessed.

ITEM 4. Amend subrule 2.27(6), introductory paragraph and first unnumbered paragraph, as follows:

**2.27(6) Nondegree admission.** A graduate of a university or college in the United States may be granted nondegree ad-

REGENTS BOARD[681](cont'd)

mission in order to: (1) transfer graduate credit earned at Iowa State University to other institutions, (2) enroll occasionally in off-campus graduate courses, or (3) take graduate courses without pursuing an advanced degree.

Transfer from nondegree admission to full admission requires submission of complete academic records, recommendation by the department head and the approval of the graduate dean, and payment of ~~an~~ *the appropriate* application fee of \$10 *as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18)* by those who do not have an undergraduate degree from Iowa State University.

**NOTICE—USURY**

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph “a,” the Superintendent of

Banking has determined that the maximum lawful rate of interest shall be:

April 1, 2003 — April 30, 2003	6.00%
May 1, 2003 — May 31, 2003	5.75%
June 1, 2003 — June 30, 2003	6.00%
July 1, 2003 — July 31, 2003	5.50%
August 1, 2003 — August 31, 2003	5.25%
September 1, 2003 — September 30, 2003	6.00%
October 1, 2003 — October 31, 2003	6.50%
November 1, 2003 — November 30, 2003	6.25%
December 1, 2003 — December 31, 2003	6.25%
January 1, 2004 — January 31, 2004	6.25%
February 1, 2004 — February 29, 2004	6.25%
March 1, 2004 — March 31, 2004	6.25%
April 1, 2004 — April 30, 2004	6.00%

## ARC 3272B

# **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

## **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The Homeland Security and Emergency Management Division is amending paragraph 10.9(3)"b" to further define eligible costs that a wireless service provider may recover from the Wireless E911 Emergency Communications Fund for providing wireless E911 service.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable because of the immediate need to begin the implementation and operation of location technologies within the enhanced wireless 911 telephone system.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be made effective on March 12, 2004, as it confers a benefit upon the citizens of Iowa by providing an increased level of wireless service. The public and public services agencies will have better response in emergency situations as location information in the form of a latitude and longitude coordinate will be provided when 911 is dialed from a wireless telephone.

The Division adopted this amendment on March 12, 2004.

This amendment is also published herein under Notice of Intended Action as **ARC 3271B** to allow for public comment.

This amendment became effective March 12, 2004.

This amendment is intended to implement Iowa Code chapter 34A.

The following amendment is adopted.

Amend paragraph **10.9(3)"b"** as follows:

b. The administrator shall retain funds necessary to reimburse wireless service providers for their eligible costs to deliver E911 services. Those eligible costs include hardware and software necessary for receipt and delivery of the enhanced wireless *911 service phase I* call and as further defined in the enhanced wireless 911 service plan.

[Filed Emergency 3/12/04, effective 3/12/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

## ARC 3248B

# **HUMAN SERVICES DEPARTMENT[441]**

## **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment extends limited Medicaid eligibility for "expanded specified low-income Medicare beneficiaries" for as long as 100 percent federal funding for the group is available. People in this coverage group have income between 120 percent and 135 percent of the federal poverty guidelines (currently \$898 to \$1011 per month for a one-person household). Coverage is limited to payment of Medicare Supplemental Medical Insurance (Part B) premiums only (currently \$66.60 per month) and is entirely reimbursed by the federal government.

This coverage is funded through appropriations to the federal Centers for Medicare and Medicaid Services for the Qualified Individuals (QI) Program. Funding for the QI Program has been scheduled to expire several times, most recently as of March 31, 2004, but has been reinstated through continuing resolutions and budget legislation. Since the Department does not have funding to continue this coverage without federal support, the Department has adopted rules to end this coverage effective with the expiration date for federal funding and then to reinstate it when funding was continued. An amendment to subrule 75.1(36), which was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 29, 2003, as **ARC 2894B**, implemented the March 31, 2004, termination date.

Public Law No. 108-173, enacted on December 8, 2003, extends federal QI Program funding through September 30, 2004. This amendment allows eligible recipients to take advantage of this extension in federal funding and of any further extensions that may be authorized. When the federal funding ends, the Department will cancel Medicaid coverage for members of the expanded specified low-income Medicare beneficiaries group.

This amendment does not provide for waivers in specified situations because it confers a benefit on people eligible for benefits under this group.

The Department finds that notice and public participation are impracticable because the rule must be changed timely in order to continue coverage that is scheduled to end. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit on the public by allowing eligible recipients to receive reimbursement for their Medicare premiums. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

The Council on Human Services adopted this amendment on March 10, 2004.

This amendment is intended to implement Iowa Code section 249A.4.

This amendment will become effective April 1, 2004.

The following amendment is adopted.

Amend subrule 75.1(36), introductory paragraph, as follows:

**75.1(36)** Expanded specified low-income Medicare beneficiaries. ~~From October 1, 2003, through March 31, 2004~~ As long as 100 percent federal funding is available under the

HUMAN SERVICES DEPARTMENT[441](cont'd)

*federal Qualified Individuals (QI) Program*, Medicaid benefits to cover the cost of the Medicare Part B premium shall be available to persons who are entitled to Medicare Part A provided the following conditions are met:

[Filed Emergency 3/11/04, effective 4/1/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

## ARC 3232B

### MEDICAL EXAMINERS BOARD[653]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3 and chapter 148, the Board of Medical Examiners hereby amends Chapter 21, "Physician Supervision of a Physician Assistant," Iowa Administrative Code.

The Board adopted the amendment to Chapter 21 during a telephone conference call on March 3, 2004. The amendment rescinds subrule 21.4(1) because no compromise could be reached on the meaning of "not actively practicing in Iowa" and renumbers the remaining subrules of rule 653—21.4(148,272C), whose January 28, 2004, effective date had been delayed for 70 days.

In compliance with Iowa Code section 17A.4(2), the Board finds that notice and public participation are unnecessary because the amendment was a compromise among the parties with an interest in this matter.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on March 9, 2004, as it confers a benefit upon the medical community and the general public. Because of this amendment, rule 653—21.4(148,272C) regarding grounds for discipline has gone into effect, thereby informing physicians and the public of a physician's responsibilities in supervising a physician assistant.

This amendment is intended to implement Iowa Code chapter 148 as amended by 2003 Iowa Acts, chapter 93, and Iowa Code section 272C.3.

This amendment became effective on March 9, 2004.

The following amendment is adopted.

Rescind subrule **21.4(1)** and renumber subrules **21.4(2)** to **21.4(4)** as **21.4(1)** to **21.4(3)**.

[Filed Emergency 3/9/04, effective 3/9/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

**ARC 3231B****AGRICULTURE AND LAND  
STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 159.5 and 215.24, the Department of Agriculture and Land Stewardship hereby amends Chapter 85, "Weights and Measures," Iowa Administrative Code.

The purpose of these amendments is to update the rules to reflect changes in current practice and national standards, including updating references to NIST Handbooks 44, 130 and 133, to allow pitless livestock scales, and to make the moisture meter tolerances technically correct.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3079B**. No public comment was received. An addition has been made to the direction in Item 5. The last unnumbered paragraph of rule 21—85.18(215) has been numbered as subrule 85.18(8).

No waiver provision is included in these amendments because an existing rule allows for waivers in appropriate cases. The waiver rule applies to these amendments.

These amendments are intended to implement Iowa Code chapters 214, 214A, 215, and 215A.

These amendments will become effective May 5, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [85.3, 85.5, 85.12, 85.17, 85.18(3) to 85.18(8), 85.29, 85.39, 85.42, 85.48(11), 85.53(1)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3079B**, IAB 1/7/04.

[Filed 3/5/04, effective 5/5/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3255B****EDUCATIONAL EXAMINERS  
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 14, "Issuance of Practitioner's Licenses and Endorsements," Iowa Administrative Code.

These amendments combine the superintendent endorsement with the AEA administrator endorsement and modify requirements to include national standards for school leaders.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3111B**. A public hearing on the amendments was held on February 10, 2004. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective May 5, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [14.142(3), 14.142(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 3111B**, IAB 1/21/04.

[Filed 3/12/04, effective 5/5/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3257B****EDUCATIONAL EXAMINERS  
BOARD[282]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 20, "Evaluator License," Iowa Administrative Code.

The new rules are to accompany rule 281—83.5(284), Evaluator Approval Training, of the Department of Education. These rules include the licensure requirements for the new evaluator endorsement or license as mandated in the Teacher Quality Bill (Iowa Code section 284.10).

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3112B**. A public hearing on the amendments was held on February 13, 2004. No one attended the public hearing, and no written comments were received.

These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective May 5, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 20] is being omitted. These amendments are identical to those published under Notice as **ARC 3112B**, IAB 1/21/04.

[Filed 3/12/04, effective 5/5/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3249B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Pro-



## HUMAN SERVICES DEPARTMENT[441](cont'd)

viders of Medical and Remedial Care,” Iowa Administrative Code.

These amendments:

- Expand Medicaid coverage for maternal health centers to include local nonemergency medical transportation. This change was requested by the Department of Public Health. The addition of coverage for transportation will allow centers to arrange and receive reimbursement for assisting pregnant women with transportation to medical appointments. This change will remove a barrier to prenatal care for some women and should result in improved pregnancy outcomes.

- Expand the list of acceptable degrees for staff who deliver care coordination and psychosocial services to align with the degrees allowed by the Department of Public Health for the Maternal and Child Health Program under Title V of the Social Security Act, which operates through the same agencies.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3115B**. The Department received one comment on the Notice of Intended Action, requesting the inclusion of dental hygiene services. The Department will address this request in a separate rule making.

The Department has made changes to the Notice of Intended Action to revise the entire rule 441—78.25(249A) to:

- Consolidate all requirements for provider qualifications under subrule 78.25(1);
- Clarify what maternal health center services are payable for all Medicaid-eligible pregnant women;
- Remove language on provider requirements that is redundant of provisions in rule 441—77.23(249A); and
- Remove provisions about additional reimbursement for enhanced services that are no longer accurate.

These amendments do not provide for waivers in specified situations because they provide a benefit to centers and their patients.

The Council on Human Services adopted these amendments on March 10, 2004.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments shall become effective on June 1, 2004.

The following amendments are adopted.

ITEM 1. Amend rule 441—78.25(249A) as follows:

**441—78.25(249A) Maternal health centers.** Payment will be made for prenatal and postpartum medical care, ~~and limited care coordination, and health education, and transportation to receive prenatal and postpartum services for persons who are not determined high-risk.~~ Payment will be made for enhanced perinatal services for persons determined high risk. These services include additional health education services, nutrition counseling, social services, additional care coordination services, and one postpartum home visit. Maternal health centers shall provide trimester and postpartum reports to the referring physician. ~~Additional prenatal and postpartum reimbursement will be made for persons determined to be high-risk.~~ Risk assessments using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy. ~~If the risk assessment reflects a high-risk pregnancy, additional reimbursement shall be provided for the enhanced services related to a high-risk pregnancy.~~

Maternal health centers which wish to administer vaccines which are available through the vaccines for children program to Medicaid recipients shall enroll in the vaccines for

children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid recipients. Maternal health centers shall receive reimbursement for the administration of vaccines to Medicaid recipients.

**78.25(1) Provider qualifications.**

a. Prenatal and postpartum medical services shall be provided by a physician, a physician assistant, or a nurse practitioner employed by or on contract with the center. Medical services performed by maternal health centers shall be performed under the supervision of a physician. Nurse practitioners and physician assistants performing under the supervision of a physician must do so within the scope of practice of that profession, as defined by Iowa Code chapters 152 and 148C, respectively.

b. *Care coordination services shall be provided by a registered nurse; a person with at least a bachelor's degree in social work, counseling, sociology, family and community services, health or human development, health education, individual and family studies, or psychology; a person with a degree in dental hygiene; a licensed practical nurse; or a paraprofessional working under the direct supervision of a health professional.*

c. *Education services and postpartum home visits shall be provided by a registered nurse.*

d. *Nutrition services shall be provided by a licensed dietitian.*

e. *Psychosocial services shall be provided by a person with at least a bachelor's degree in social work, counseling, sociology, psychology, family and community services, health or human development, health education, or individual and family studies.*

**78.25(2) Services covered for all pregnant women.** The services provided to a person determined to be low-risk ~~Services provided may include:~~

- Prenatal and postpartum medical care.
- Health education, which shall include:
  - (1) Importance of continued prenatal care.
  - (2) Normal changes of pregnancy including both maternal changes and fetal changes.
  - (3) Self-care during pregnancy.
  - (4) Comfort measures during pregnancy.
  - (5) Danger signs during pregnancy.
  - (6) Labor and delivery including the normal process of labor, signs of labor, coping skills, danger signs, and management of labor.
- Preparation for baby including feeding, equipment, and clothing.
- Education on the use of over-the-counter drugs.
- Education about HIV protection.

c. Care coordination services, which shall include:

- (1) Presumptive eligibility.
- (2) Referral to WIC.
- (3) Referral for dental services.
- (4) Referral to physician or midlevel practitioners.
- (5) Risk assessment.
- (6) Arrangements for delivery, as appropriate.
- (7) Arrangements for prenatal classes.
- (8) Departmental multiprogram application.
- (9) Hepatitis screen.
- (10) Referral for eligible services.

d. *Transportation to receive prenatal and postpartum services that is not payable under rule 441—78.11(249A) or 441—78.13(249A).*

**78.25(3) Enhanced services covered for women with high-risk pregnancies.** Enhanced perinatal services may be provided to a patient who has been determined to have a

## HUMAN SERVICES DEPARTMENT[441](cont'd)

high-risk pregnancy as documented by Form 470-2942, Medicaid Prenatal Risk Assessment. ~~Enhanced perinatal services may be provided by licensed dietitians; persons with at least a bachelor's degree in social work, counseling, sociology, or psychology; physicians; and registered nurses employed by or on contract with the center.~~ An appropriately trained physician or advanced registered nurse practitioner must be involved in staffing the patients receiving enhanced services.

Enhanced services are as follows:

a. Care coordination, the coordination of comprehensive prenatal services, ~~which shall be provided by a registered nurse; or a person with at least a bachelor's degree in social work, counseling, sociology, or psychology and shall include:~~

(1) Developing an individual plan of care based on the client's needs, including pregnancy and personal and interpersonal issues. This package includes counseling (such as coaching, supporting, educating, listening, encouraging, and feedback), referral, and assistance for other specified services such as mental health.

(2) Ensuring that the client receives all components as appropriate (medical, education, nutrition, psychosocial, and postpartum home visit).

(3) Risk tracking.

b. ~~Education services shall be provided by a registered nurse.~~ Education, ~~which shall include as appropriate education about the following:~~

(1) ~~Education about high-risk~~ High-risk medical conditions.

(2) High-risk sexual behavior.

(3) Smoking cessation.

(4) Alcohol usage education.

(5) Drug usage education.

(6) Environmental and occupational hazards.

c. ~~Nutrition services shall be provided by a licensed dietitian.~~ Nutrition assessment and counseling, ~~which shall include:~~

(1) Initial assessment of nutritional risk based on height, current and prepregnancy weight status, laboratory data, clinical data, and self-reported dietary information.

(2) Ongoing nutritional assessment.

(3) Development of an individualized nutritional care plan.

(4) Referral to food assistance programs if indicated.

(5) Nutritional intervention.

d. ~~Psychosocial services shall be provided by a person with at least a bachelor's degree in social work, counseling, sociology or psychology.~~ Psychosocial assessment and counseling, ~~which shall include:~~

(1) A psychosocial assessment including: needs assessment, profile of client demographic factors, mental and physical health history and concerns, adjustment to pregnancy and future parenting, and environmental needs.

(2) A profile of the client's family composition, patterns of functioning and support systems.

(3) An assessment-based plan of care, risk tracking, counseling and anticipatory guidance as appropriate, and referral and follow-up services.

e. A postpartum home visit within two weeks of the child's discharge from the hospital, ~~which shall be provided by a registered nurse and shall include:~~

(1) Assessment of mother's health status.

(2) Physical and emotional changes postpartum.

(3) Family planning.

(4) Parenting skills.

(5) Assessment of infant health.

(6) Infant care.

(7) Grief support for unhealthy outcome.

(8) Parenting of a preterm infant.

(9) Identification of and referral to community resources as needed.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Amend subrule **79.1(2)**, provider category "maternal health centers," as follows:

Provider category	Basis of reimbursement	Upper limit
Maternal health centers	Reasonable cost per procedure service on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect 6/30/01 less 3%

[Filed 3/11/04, effective 6/1/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

**ARC 3250B**

## HUMAN SERVICES DEPARTMENT[441]

### Adopted and Filed

Pursuant to the authority of Iowa Code section 232.142, the Department of Human Services amends Chapter 105, "County and Multicounty Juvenile Detention Homes and County and Multicounty Juvenile Shelter Care Homes," Iowa Administrative Code.

These amendments:

- Clarify the standards that detention and shelter facilities must follow in providing health care and in administering and managing medications for resident children.

- Correct provisions regarding procedures for child abuse and criminal records checks to conform to current statutory requirements.

- Update form numbers and names.

Changes in standards for health care and medication administration were developed collaboratively with the shelter providers' subcommittee of the Iowa Coalition for Family and Children's Services, the Iowa Juvenile Detention Association, the Department of Inspections and Appeals, the Division of Criminal and Juvenile Justice Planning of the Iowa Department of Human Rights, and the Iowa Department of Public Health. Changes include:

- Requiring a preliminary review of each child's health status at intake, followed by a more comprehensive assessment if the child has not had an assessment within the last year.

- Requiring facilities to share information about significant changes in medical status with the child's parents and caseworker and to include this information in the child's discharge summary.

- Expanding the authorized prescribers of medication to include all of the options allowed by Iowa law.

- Adding policies on the use of nonprescription medications.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Requiring facilities to document errors in medication administration.
- Clarifying procedures for destroying leftover, outdated or unusable medication.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3116B**. The Department received three comments on the Notice of Intended Action.

Shelter and detention representatives expressed concern over the requirement for a comprehensive health examination to be performed within seven days of admission, due primarily to problems getting enough information about the child. In response, the Department has amended the third sentence of paragraph 105.8(6)"a" and added another sentence. These sentences now read as follows: "Within seven days of intake, all reasonable efforts shall be made to perform a more comprehensive health assessment on each child who has not had a comprehensive health assessment within the past year. If the assessment cannot be performed within seven days, it shall be arranged for the earliest possible time, and the reasons for the delay shall be documented."

Comments from the Department of Inspections and Appeals pointed out that the provisions for child abuse and criminal records checks in this chapter do not conform to Iowa Code section 232.142(4), which requires the application of the same standards as are applied for staff of foster care facilities.

Although this subject matter was not directly addressed in the Notice of Intended Action, the Department has determined that notice and the opportunity for public comment on changes to these provisions is unnecessary, since these provisions are prescribed by statute. Also, the Department of Inspections and Appeals, which conducts licensing surveys of shelter and detention facilities under contract to the Department of Human Services, has been operating in compliance with the statute. In effect, these are technical changes to conform the rules to current statutory requirements and current practice. These changes include:

- Eliminating language in paragraphs 105.3(3)"g," "i," and "j" indicating that a person may be employed before record checks are completed and that only crimes involving mistreatment or exploitation of children are considered.
- Striking the second sentence in paragraph 105.3(3)"j," which prescribes a particular form for criminal record checks on people employed before 1983. The facility may repeat these checks whenever the facility has reason to suspect that an employee has a criminal record, and the form used in 1983 is not the same as the form used today.
- Adopting new subrule 105.5(5), which parallels foster group facility licensing requirements for staff at 441—paragraph 114.8(1)"e," with the addition of a prohibition that was previously part of paragraph 105.3(3)"i." The new language prohibits facilities from employing a person with a criminal or child abuse record unless a Department evaluation permits it, and details procedures for evaluation of these records.

Comments from representatives of detention facilities requested evaluation of the proposed rules in light of federal regulations issued for the implementation of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). HIPAA applies to health plans, health care providers, and health care clearinghouses. It allows sharing of health care information without a specific patient authorization for the purposes of treatment, payment, and health care operations. The Department does not see a conflict between these rules and HIPAA regulations.

These amendments do not provide for waivers in specified situations because they benefit children in shelter and detention facilities by enhancing safety while providing greater access to needed medications, and they benefit facilities by eliminating outdated and conflicting requirements. Facilities may request a waiver of these standards under the Department's general rule at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on March 10, 2004.

These amendments shall become effective on May 5, 2004.

These amendments are intended to implement Iowa Code section 232.142.

The following amendments are adopted.

ITEM 1. Amend rule **441—105.1(232)** by adopting the following **new** definitions:

"Administer medication" means to remove medication from its storage place; to ensure to the extent possible that the child ingests, applies, or uses the appropriate dosage at the appropriate time of day; and to document the dosage and the time and date that the child ingested, applied, or used the medication.

"Authorized prescriber" means those persons identified in Iowa Code section 147.107 and Iowa Code chapter 154.

"Controlled substances" means those substances identified in Iowa Code chapter 124.

"Nonprescription medication" means any drug or device that is not a prescription medication as defined in this chapter.

"Prescription medication" means a prescription drug as defined in Iowa Code section 155A.3(30).

ITEM 2. Amend subrule **105.2(12)**, paragraph "f," as follows:

f. A facility with unsafe water can meet water safety requirements by utilizing an alternative safe water source for foster children until the facility's own water supply is tested as safe. ~~The Unsafe Water Sample Approval Form, SS-2208 facility must be completed~~ *complete Form 470-0699, Provisions for Alternate Water Supply, and approved by obtain approval from the department.*

ITEM 3. Amend subrule **105.3(3)**, paragraphs "g," "i," and "j," as follows:

g. Documentation of the submission of Form SS-1606-0 470-0643, Request for Child Abuse Information, to the central abuse registry, ~~and the registry response, the department's evaluation of any abuse record discovered, and a copy of Form 470-2310, Record Check Evaluation, if the staff person has completed and submitted it. The request may be submitted after probationary employment but the response must be received before permanent employment is assured.~~

i. Documentation of a check with the Iowa department of public safety on all new applicants for employment asking ~~only whether the applicant has been convicted of a crime involving the mistreatment or exploitation of a child prior to permanently employing the individual. Department using Form SS-2203 595-1396, "Department of Public Safety DHS Criminal History Record Check," Form B; shall be used a copy of the department's evaluation of any criminal record discovered; and a copy of Form 470-2310, Record Check Evaluation, if the applicant has completed and submitted it.~~

~~Any individual convicted of a crime involving the mistreatment or exploitation of a child shall not be employed by the facility.~~

j. Documentation of any checks with the Iowa department of public safety for persons hired ~~prior to before~~ July 1,

## HUMAN SERVICES DEPARTMENT[441](cont'd)

1983, for whom the agency has reason to suspect a criminal record ~~and asking only whether the employee has been convicted of a crime involving the mistreatment or exploitation of a child.~~ Department Form SS-2203, "Department of Public Safety Check," shall be used.

ITEM 4. Amend rule 441—105.5(232) by adopting the following new subrule:

**105.5(5)** Record checks. The facility shall not employ any person who has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ a person who has a record of a criminal conviction or founded child abuse report unless the department has made an evaluation of the crime or founded child abuse which concludes that the crime or founded child abuse does not merit prohibition of employment.

a. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation.

b. In its evaluation, the department shall consider:

- (1) The nature and seriousness of the crime or founded abuse in relation to the position sought;
- (2) The time elapsed since the commission of the crime or founded abuse;
- (3) The circumstances under which the crime or founded abuse was committed;
- (4) The degree of rehabilitation; and
- (5) The number of crimes or founded abuses committed by the person involved.

ITEM 5. Rescind subrule 105.8(6) and adopt the following new subrule in lieu thereof:

**105.8(6)** Health care.

a. Health assessment at intake. Facility staff shall review each child's health status at intake. The purpose of this preliminary review is to identify medication needs and problems that need immediate medical attention. Within seven days of intake, all reasonable efforts shall be made to perform a more comprehensive health assessment on each child who has not had a comprehensive health assessment within the past year. If the assessment cannot be performed within seven days, it shall be arranged for the earliest possible time, and the reasons for the delay shall be documented. A registered nurse, an advanced registered nurse practitioner, a physician assistant, or a physician shall perform the comprehensive health assessment.

b. Existing health needs. Facilities shall provide or secure medical treatment for a child's illnesses and injuries that come to the facility's attention during the child's stay.

c. Monitoring side effects of medications. Facilities shall monitor each child's use of medications and shall inform the authorized prescriber if adverse reactions are noted.

d. Sharing medical information. Facilities shall share information about significant changes in medical status with the child's caseworker and parents or guardian. Discharge information shall include information about significant medical changes that occurred while the child was at the facility.

ITEM 6. Rescind rule 441—105.9(232) and adopt the following new rule in lieu thereof:

**441—105.9(232) Medication management and administration.**

**105.9(1)** Obtaining prescription medications. Facilities shall permit prescription medications to be brought into the facility for a child.

a. Prescription medication in its original container, clearly labeled and prescribed for the child, may be accepted as legitimate prescription medication for the child. The label serves as verification that the medication was ordered by an authorized prescriber.

b. Facilities shall review size, shape, color, and dosages and contact the identified pharmacy or authorized prescriber to confirm legitimacy if contraband is suspected.

**105.9(2)** Obtaining nonprescription medications. Shelter and detention facilities shall maintain a supply of standard nonprescription medications for use for children residing at the facility. Examples of standard nonprescription medications include cough drops and cough syrups, aspirin substitutes and other pain control medication, poison antidote, and diarrhea control medication.

a. All nonprescription medications kept on the premises for the use of residents shall be preapproved annually by a licensed pharmacist or an authorized prescriber.

b. Facilities shall maintain a list of all preapproved nonprescription medications. The list shall indicate standard uses, standard dosages, contraindications, side effects, and common drug interaction warnings. The facility administrator or the administrator's designee shall be responsible for determining the scope of the list and brands and types of medications included.

c. Only nonprescription medications on the preapproved list shall be available for use. However, the facility administrator or the administrator's designee, in consultation with an authorized prescriber or licensed pharmacist, may approve use of a nonprescription medication that is not on the preapproved list for a specific child.

**105.9(3)** Storing medications. Prescription and nonprescription medications shall be stored in a locked cabinet, a locked refrigerator, or a locked box within an unlocked refrigerator.

a. Controlled substances shall be stored in a locked box within a locked cabinet. Nothing other than controlled substances shall be stored in the locked box. Controlled substances requiring refrigeration also shall be maintained within a double-locked container separate from food and other items.

b. The facility administrator shall determine distribution and maintenance of keys to the medication storage cabinets and boxes.

c. A shelter facility administrator or the administrator's designee may preapprove shelter staff to carry prescription or nonprescription medications with them temporarily for use while on day trips or at sites away from the facility.

**105.9(4)** Labeling medications. Controlled substances and prescription medications shall be maintained in their original containers, clearly labeled by an authorized prescriber and prescribed for the child. Sample prescription medications shall be accompanied by a written prescription. Nonprescription medications shall be maintained as purchased in their original containers.

**105.9(5)** Administering controlled medications. Only staff who have completed a medication administration course shall be allowed to administer controlled substances.

**105.9(6)** Administering prescription and nonprescription medications. The facility administrator shall determine and provide written authority as to which staff may administer prescription and nonprescription medications.

a. Prescription medications shall be administered only in accordance with the orders of the authorized prescriber. Nonprescription medications shall be administered following the directions on the label.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. The facility administrator or the administrator's designee may allow a child to self-administer prescription and nonprescription medication in appropriate situations. The facility shall require documentation if the child self-administers a medication.

**105.9(7)** Documenting errors in administering medications. All errors in administering prescription and nonprescription medications shall be documented. Facilities shall review and take appropriate action to ensure that similar errors do not recur.

**105.9(8)** Medication for discharged residents. When a child is discharged or leaves the facility, the facility shall turn over to a responsible agent controlled substances and prescription medications currently being administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

a. The name, strength, dosage form, and quantity of each medication.

b. The signature of the facility staff person turning over the medications to the responsible agent.

c. The signature of the responsible agent receiving the medications.

**105.9(9)** Destroying outdated and unused medications. Unused controlled and prescription medications kept at the facility for more than six months after the child has left the facility shall be destroyed by the administrator or the administrator's designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

a. The child's name.

b. The name, strength, dosage form, and quantity of each medication.

c. The date the medication was destroyed.

d. The names and signatures of the witness and staff person who destroyed the medications.

ITEM 7. Amend subrule 105.10(1), introductory paragraph, as follows:

**105.10(1)** Written policies. When a juvenile detention facility uses a control room as part of its service, the facility shall have written policies regarding its use and the facility director shall complete Form SS-2209-3 470-0700, Evaluation and Recommendation to Operate a Control Room. The policy shall:

ITEM 8. Rescind and reserve subrule **105.18(2)**.

ITEM 9. Amend rule 441—105.19(232) as follows:

Amend the introductory paragraph as follows:

**441—105.19(232) Approval.** The department will issue a Certificate of Approval, SS-1205-0 Form 470-0620, annually without cost to any juvenile detention home or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

Amend subrule 105.19(1), introductory paragraph, as follows:

**105.19(1)** Applications. An application shall be submitted ~~on forms provided by the department, SS-3105-0 Form 470-0723, Application for License or Certificate of Approval.~~ *The application* shall be signed by the operator of the home, chairman of the county board of supervisors, or chairman of the multicounty board of directors and shall indicate the type of home for which the application is made.

Amend subrule 105.19(4) as follows:

**105.19(4)** Notification. Homes should be notified of approval or rejection within 120 days of application unless the

applicant requests and is granted an extension by the department. Form SS-3307 470-0728, ~~Notification~~ *Notice of Action*, will be used to inform applicants of approval, and a restricted certified letter will be used to inform applicants of rejection.

ITEM 10. Amend rule 441—105.21(232), introductory paragraph, as follows:

**441—105.21(232) Mechanical restraint—juvenile detention only.** When a juvenile detention facility uses mechanical restraints as part of its program, the facility shall have written policies regarding their use. These policies shall be approved by the department ~~prior to their~~ *before use of mechanical restraints*. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff. The executive director of the detention home shall sign the commitment contained in Form SS-2212-3 470-0703, "Evaluation and Recommendation for Approval to Use Mechanical Restraint," before the facility shall be approved to use a mechanical restraint.

[Filed 3/11/04, effective 5/5/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

## ARC 3251B

HUMAN SERVICES  
DEPARTMENT[441]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6 and 238.16, the Department of Human Services amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 150, "Purchase of Service," Chapter 156, "Payments for Foster Care and Foster Parent Training," Chapter 185, "Rehabilitative Treatment Services," and Chapter 202, "Foster Care Services," Iowa Administrative Code.

These amendments affect the category of foster care placement called "independent living," which is an option for youth aged 16 or over who have the capacity to live in the community with less supervision than is provided in a foster family or group care placement. The focus of service activities is to prepare youth for self-sufficiency when they leave foster care. These amendments were recommended by a group of stakeholders brought together in response to a report by the Iowa Citizens' Aide/Ombudsman listing concerns about how the state delivers services to youth "aging out" of foster care. The group was charged with recommending ways to improve the program and to better identify and serve the type of youth that can be served in this kind of foster care placement.

These amendments change the name of this type of placement to "supervised apartment living" and change eligibility requirements by:

- Allowing youth who have left foster care at age 18 to return voluntarily before they reach age 20 in order to complete their high school education or obtain a GED.

- Removing as an initial eligibility requirement a condition that a youth must have had no involvement in illegal behavior, including use of controlled substances or alcohol. When a youth receiving supervised apartment living services refuses to follow the provisions of the case plan after having

## HUMAN SERVICES DEPARTMENT[441](cont'd)

been given the opportunity to correct the behavior, services will be terminated.

- Removing as an initial eligibility requirement a condition that a youth must have the potential to be financially and emotionally independent upon discharge from services because it is difficult to predict what a youth's responses to services will be. The goal of services is to assist the youth in the transition to self-sufficiency.

- Requiring juvenile court approval for placement of youth who are under the age of 18.

These amendments also:

- Remove the cap on the number of hours of service that may be purchased.
- Require face-to-face visits weekly with youth under age 18 and biweekly with youth aged 18 or over.
- Require quarterly monitoring and evaluation of services.
- Make staffing requirements in 441—Chapter 202 consistent with licensing rules for child-placing agencies in 441—Chapter 108.
- Remove the six-month limit on placement in a cluster arrangement.
- Clarify language and update legal and organizational references.

These rules provide for waivers of continuous placement requirements and of work and work training requirements in specified situations. Individuals requesting a waiver of other provisions may do so under rule 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on January 21, 2004, as **ARC 3117B**. The Department received one comment on the Notice of Intended Action.

The Department has made the following changes to the Notice of Intended Action:

- Paragraph 202.9(1)“e” is revised to remove the word “comprehensive” and replace the phrase “live independently” with the phrase “function in the community.” The amended paragraph reads: “e. Have capacity to live in the community with less supervision than that provided by a foster family or group care setting, as determined by an assessment that reviews available information on the youth to identify the needs, strengths, and resources of the youth, especially as they pertain to the youth's ability to function in the community.”

- The second sentence in subparagraph 202.9(3)“a”(2) is revised to change the phrase “one or more youths” to “more than one youth” to be more consistent with the requirements for scattered site arrangements. Also, the cross-reference to rule 441—108.4(238) is removed. The agency must be a licensed child-placing agency to be a provider of supervised apartment living services. Therefore, all requirements of 441—Chapter 108 apply. The amended sentence reads: “Cluster arrangements shall have an adult employed by the agency on site at any time that more than one youth is present in the cluster arrangement.”

The Council on Human Services adopted these amendments on March 10, 2004.

These amendments are intended to implement Iowa Code sections 234.6 and 238.16.

These amendments shall become effective June 1, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 108, 150, 156, 185, 202] is being omitted. With the exception of the changes

noted above, these amendments are identical to those published under Notice as **ARC 3117B**, IAB 1/21/04.

[Filed 3/11/04, effective 6/1/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3254B****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 50, “Health Care Facilities Administration,” and rescinds Chapter 52, “Birth Centers,” Iowa Administrative Code.

The amendments to Chapter 50 eliminate obsolete references, update citations and definitions, and, due to the repeal of Iowa Code chapter 135G during the 2002 session of the Iowa General Assembly, strike references to birth centers. The adopted amendments also establish a procedure by which hospices and home health agencies shall conduct criminal history and dependent adult abuse background checks, as required by Iowa law.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3128B**. No comments were received on the amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The amendments were presented to the State Board of Health for initial review at the Board's January 14, 2004, meeting. The adopted amendments were presented to and approved by the Board at its March 10, 2004, meeting.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 136C.19 and Executive Order Number 8.

These amendments will become effective May 5, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [50.1 to 50.3, 50.3(3), 50.6, 50.7, 50.8(2), 50.8(4), 50.8(5), 50.9; rescind Ch 52] is being omitted. These amendments are identical to those published under Notice as **ARC 3128B**, IAB 2/4/04.

[Filed 3/12/04, effective 5/5/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3252B****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, “Nursing Facilities,” Chapter 64, “Intermediate Care Facilities for the Mentally

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Retarded,” and Chapter 65, “Intermediate Care Facilities for Persons with Mental Illness (ICF/PMI),” Iowa Administrative Code.

The amendments implement changes made to the admission procedures for certain long-term care facilities as required by 2003 Iowa Acts, chapter 112, section 2, as amended by 2003 Iowa Acts, chapter 179, section 160. The amendments require long-term care facilities receiving reimbursement through the Medicaid program to assist the Iowa Commission on Veterans Affairs in identifying residents’ eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs. The amendments stipulate that they do not apply to individuals admitted to a state mental health institute for acute psychiatric care.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 7, 2004, as **ARC 3081B**. A public hearing was held January 28, 2004. No comments were received on the amendments. The adopted amendments are identical to those published under Notice of Intended Action.

The amendments were presented to the State Board of Health for initial review at the Board’s November 12, 2003, meeting. The adopted amendments were presented to and approved by the Board at its March 10, 2004, meeting.

These amendments are intended to implement 2003 Iowa Acts, chapter 112, section 2, as amended by 2003 Iowa Acts, chapter 179, section 160.

These amendments will become effective May 5, 2004.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [58.12(1)“l,” 64.6, 65.10“10”] is being omitted. These amendments are identical to those published under Notice as **ARC 3081B**, IAB 1/7/04.

[Filed 3/12/04, effective 5/5/04]  
[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3253B****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 58, “Nursing Facilities,” Iowa Administrative Code.

The amendment implements a paid nutritional assistant program for long-term care facilities in Iowa. In September 2003, the federal Centers for Medicare & Medicaid Services (CMS) published new rules allowing for the use of paid nutritional assistants in nursing facilities. The Department’s amendment mirrors the federal action and allows nursing facilities in Iowa to use paid nutritional assistants. The amendment further stipulates the minimum content for the paid nutritional assistant training program and outlines testing, record keeping, and working restrictions for paid nutritional assistants.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3127B**. Only one comment was received on the amendment. The

adopted amendment is identical to that published under Notice of Intended Action.

The amendment was presented to the State Board of Health for initial review at the Board’s January 14, 2004, meeting. The adopted amendment was presented to and approved by the Board at its March 10, 2004, meeting.

This amendment is intended to implement Iowa Code sections 10A.104(5) and 135C.14.

This amendment will become effective May 5, 2004.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [58.24(9)] is being omitted. This amendment is identical to that published under Notice as **ARC 3127B**, IAB 2/4/04.

[Filed 3/12/04, effective 5/5/04]  
[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3273B****LOTTERY AUTHORITY, IOWA[531]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 99G.9(3), the Iowa Lottery Authority hereby rescinds 705—Chapters 1 to 8, 11, 13 and 14 and adopts Chapter 1, “General Operation of the Lottery,” Chapter 2, “Purchasing,” Chapter 3, “Procedure for Rule Making,” Chapter 4, “Waiver and Variance Rules,” Chapter 5, “Contested Cases,” Chapter 6, “Declaratory Orders,” Chapter 11, “Prizes,” Chapter 12, “Licensing,” Chapter 13, “Licensed Retailers,” Chapter 14, “Monitor Vending Machines,” Chapter 18, “Scratch Ticket General Rules,” Chapter 19, “Pull-Tab General Rules,” and Chapter 20, “Computerized Games—General Rules,” Iowa Administrative Code.

These rules are necessary as a result of major statutory changes to the way the Iowa Lottery operates. Prior to July 1, 2003, the Iowa Lottery was a division of the Department of Revenue and Finance. On July 1, 2003, the Lottery Division of the Department of Revenue and Finance became the Iowa Lottery Authority, an autonomous instrumentality of the state of Iowa, no longer connected to an executive branch department. Because of the organizational change, the Lottery’s former administrative rules are rescinded and new rules are adopted.

Notice of Intended Action for these rules was published in the September 17, 2003, Iowa Administrative Bulletin as **ARC 2770B** and the rules were simultaneously Adopted and Filed Emergency as **ARC 2771B**. A public hearing was scheduled for October 10, 2003, at the Iowa Lottery headquarters; however, the meeting was canceled because no written requests to make oral presentations during the meeting were received. The Lottery Authority also received no written comments from the public on the proposed changes. However, after internal review, Lottery Authority staff determined that some modifications to the Noticed rules were necessary.

In all chapters, references to 2003 Iowa Acts, Senate File 453, have been updated to reflect Iowa Code Supplement chapter 99G. Changes were made to rules 2.1(99G) and 2.2(99G). In rule 2.1(99G), language regarding major procurements was updated to include current statutory language,

LOTTERY AUTHORITY, IOWA[531](cont'd)

and the dollar amounts for the purchase of items that require formal and informal competitive bidding were changed to reflect current Department of Administrative Services guidelines. In rule 12.3(99G), the definition of "applicant or person" was clarified to include references to limited liability companies. In rule 12.13(99G,252J), clarification was made about when a hearing on suspension or revocation of a retailer license will occur. In rule 12.16(99G), language on financial responsibility background checks was updated and clarified. A number of changes have been made to the monitor vending machine rules contained in Chapter 14. Language has been clarified and updated and some substantive changes have been made as a result of modifications to the MVM program that have been made since the Notice of Intended Action was published.

Revised Chapters 2, 12 and 14 read as follows:

CHAPTER 2  
PURCHASING

**531—2.1(99G) Applicability of competitive bidding.** All "major procurements" shall be obtained as a result of competitive bidding, except in cases where a single vendor has an exclusive right to offer a particular product or service. Major procurements include consulting agreements and the major procurement contract with a business organization for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game.

Items, including goods or services, other than major procurements, that are expected to cost in the aggregate in excess of \$50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the lottery or through the department of administrative services whenever such procurement is in the best interests of the lottery. Items, including goods or services, other than major procurements, that are expected to cost in the aggregate \$50,000 or less may be obtained as a result of an informal competitive bidding process. Items, including goods or services, other than major procurements, expected to cost less than \$50,000 in the aggregate may be obtained in any manner deemed appropriate by the lottery.

Notwithstanding the foregoing, the lottery may exempt an item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the lottery determines that its best interests will be served by exemption from the bidding process and the item to be purchased is not a major procurement.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.2(99G) Methods of obtaining bids or proposals used by the lottery.** Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the lottery shall choose the method of bidding to be utilized.

**2.2(1)** Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than \$50,000.

The lottery shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the lottery. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery's Internet Web site.

The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

Formal bids, other than major procurement sealed bids, received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the lottery for one year following the date on which the bids were opened.

An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the lottery in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

**2.2(2)** Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate \$50,000 or less. Informal bids may be obtained by the lottery through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the lottery shall contact selected vendors supplying the goods or services sought by the lottery and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery's Internet Web site.

Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a screen print shall be used to record the bid received. Following the submission deadline, the lottery shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the lottery for one year following the submission deadline.

If an award is not made within the time frame indicated by the lottery when requesting bids, all bids shall be deemed rejected.

**2.2(3)** Whenever a requirement exists for an item or a major procurement and cost may not be the sole criterion for selection, the lottery may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the lottery's requirements and goals to allow the vendor to propose a solution to the lottery's requirements.

The lottery shall prepare a written request for proposals and shall send the proposal via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the lottery.

The lottery requires that bids submitted in response to a request for proposals in a major procurement for award of a contract for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game be submitted as sealed bids. The contents of sealed bids shall be made available to any interested party at the time designated in the request for proposals. A bidder shall identify with clear markings the pages, sections, or documents submitted as part of a proposal package that the bidder



## LOTTERY AUTHORITY, IOWA[531](cont'd)

claims are exempt from disclosure because they contain sensitive business or trade secret information.

To ensure the fairness and integrity of the evaluation process, the lottery may elect to evaluate and score any of the technical, financial, security, and marketing components of major procurement sealed bid proposals prior to opening and integrating the scoring of the pricing component. When scoring has been completed, the evaluation team shall prepare a recommendation report for an award and, if applicable, for rejection of any or all proposals under consideration. The recommendation report shall be submitted to the chief executive officer and the lottery board for such action as the chief executive officer and board may deem appropriate. The report shall be made available to any interested person immediately upon transmittal to the chief executive officer and the board. Prior to making an award, the board and chief executive officer shall receive and consider the results of a background investigation conducted by the department of public safety division of criminal investigation.

An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the lottery in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the submission deadline; administrative requirements for submitting the proposal and the format required by the lottery; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the lottery anticipates may affect the terms of the vendor's proposal.

This rule is intended to implement Iowa Code section 72.3 and Iowa Code Supplement sections 99G.7, 99G.9, and 99G.21.

**531—2.3(99G) Items purchased through the department of administrative services.** Goods and services may be obtained by the lottery through the department of administrative services whenever procurement through administrative services is in the best interests of the lottery. Items procured through administrative services may be obtained by administrative services in any manner deemed appropriate by administrative services.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.4(99G) Advertising solicitations.** Formal bids and requests for proposals issued by the lottery shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.5(99G) Contract purchases.** The lottery may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.6(99G) Blanket purchase agreements.** If the lottery foresees a requirement for frequent purchases of off-the-shelf items, the lottery may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.7(99G) Prospective vendor selection.**

**2.7(1)** Any firm or business legally conducting business within Iowa may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the lottery. The lottery may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor that the lottery chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons: failure to respond to three consecutive solicitations; failure to deliver within specified delivery dates; failure to deliver in accordance with specifications; attempts to influence the decision of any state employee involved in the procurement process; evidence of agreements by the vendor to restrain trade or impede competitive bidding; and any other activities of the vendor which the lottery determines would render the vendor unsuitable.

The lottery shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the lottery. If the lottery ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the lottery's action to the lottery board pursuant to the criteria for vendor appeals contained in these rules.

**2.7(2)** The lottery shall select vendors to receive solicitation documents based on the lottery's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the lottery. The lottery shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.8(99G) Bids and proposals to conform with specifications.** All bids and proposals must conform to the specifications indicated by the lottery. Bids and proposals that do not conform to the specifications stated may be rejected. The lottery reserves the right to waive deficiencies in the bids or proposals if in the judgment of the lottery its best interests would be served by the waiver.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.9(99G) Time of delivery.** When evaluating bids or proposals, the lottery may consider the time of delivery when determining the successful vendor.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.10(99G) Cash discounts.** When evaluating bids or proposals, the lottery may consider cash discounts.

## LOTTERY AUTHORITY, IOWA[531](cont'd)

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.11(99G) Tie bids.** The lottery shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses.

If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the lottery shall document the drawing.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.12(99G) Time of submission.** All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the lottery prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the lottery prior to the submission deadline indicated by the lottery. Formal bids and proposals shall be marked by the lottery with the date and time received by the lottery. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.13(99G) Modification or withdrawal of bids.** Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the lottery if the lottery finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

**531—2.14(99G) Financial security.** The lottery may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the lottery, or any other form specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

**531—2.15(99G) Rejection of bids and proposals.** The lottery reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the lottery's requirements, or for any other reason if the lottery determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new

bids may be requested by the lottery at any time deemed convenient by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

**531—2.16(99G) Background and informational statements.****2.16(1) Criminal history and background checks.**

a. All bidders for major procurements, as defined in Iowa Code Supplement section 99G.3, and any other bidders that the chief executive officer, in the chief executive officer's sole discretion, may require (hereinafter "bidder") shall submit to lottery business entity criminal history checks and background investigations (hereinafter "bidder investigations") as conditions for submission of a bid.

b. Bidders for major procurements shall be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

c. Bidders that are not bidders for major procurements may be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

d. For all bidders, any change in key personnel during the bidding process or during the contract term must be reported to the lottery authority before the change occurs. Replacement personnel will be subject to investigation.

e. If, during the course of any investigation, it is determined that either a bidder for a major procurement or any persons employed by or associated with a bidder for a major procurement who are the subjects of key personnel investigations in accordance with subrule 2.16(3) have been convicted of any state or federal felony related to the security or integrity of the lottery in Iowa or any other jurisdiction, the bidder will be automatically disqualified from the selection process without further investigation.

**2.16(2) Bidder investigations.**

a. General provisions. The Iowa lottery major procurement business entity background investigation form (Class L form) must be completed for each bid submitted in response to a lottery major procurement solicitation.

The Class L form shall be posted on the lottery's Web site and is intended to serve both as a vehicle for collection of information pertaining to bidders and as an overview of the scope of the bidder investigations to be conducted.

The department of public safety division of criminal investigation shall utilize the information provided in the Class L form as the basis for developing the initial scope of the bidder investigation and due diligence to be conducted with respect to a bidder. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the Class L form, the division of criminal investigation shall consult with the lottery chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

b. Class L form requirements. The Class L form shall solicit the following information:

(1) The names, addresses, and telephone numbers of all persons who gathered information and prepared the Class L form on behalf of the bidder; the name, address and type of business entity on whose behalf the Class L form is furnished; and the name and telephone number of a contact person for purposes of the procurement.

(2) The location of the bidder's business records; the state and date of incorporation or establishment of the bidder; the federal and state employer identification numbers of the bid-

## LOTTERY AUTHORITY, IOWA[531](cont'd)

der; the names and addresses of any parent companies, subsidiaries, or affiliates of the bidder; whether the bidder's stock is publicly or closely held; and a copy of the articles of incorporation or charter, bylaws, organizational chart, corporate certificate, or partnership agreement of the bidder, as may be applicable.

(3) The following information for each corporate officer and director and, if not a publicly held corporation, each partner (general or limited) or stockholder holding 5 percent or more of the outstanding stock of the bidder: name; positions held; business and residence addresses and telephone numbers; date of birth; social security number; percentage of stock held; amount of compensation received from the bidder in excess of \$10,000, including but not limited to salary or wages, director's fees, and stock options and dividends; and designation as to whether the named person will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

(4) The identity of any other persons not named in subparagraph (3) above who will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

(5) If the bidder is a publicly held corporation, a copy of the bidder's most recent annual report.

(6) The name and address of each officer, director, partner or stockholder actively involved in the conduct of the day-to-day operation of the bidder.

(7) The name and address of the internal certified public accountant employed by the bidder and the name, address, and telephone number of the external certified public accountant employed by the bidder.

(8) A list of all criminal proceedings and civil proceedings predicated in whole or part on alleged criminal activity involving the bidder during the ten-year period immediately preceding the submission date of the Class L form.

(9) Whether the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense within the last seven years. An explanation of any such occurrence shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

(10) Whether any officer or director of the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has ever been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense. An explanation of any such occurrences shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

(11) A list of any proceedings within the last five years involving allegations against the bidder or its officers or directors of antitrust violations, trade regulation violations, security judgments, and insolvency proceedings.

(12) A list of any license denials, suspensions, or revocations within the last seven years involving any officers or directors of the bidder.

(13) Whether the bidder has sustained a loss within the last ten years in which an insurance payment of \$50,000 or more was received; if so, a detailed explanation listing the

nature, date and disposition of the incident and the name and address of the insurance company that made the settlement.

(14) Whether the bidder sustained a loss by fire in which arson was suspected within the past ten years; if so, a detailed explanation listing circumstances surrounding the fire and the name and address of the investigating agency should also be included.

(15) A list of any application to or any permit, license, certificate or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the bidder or any subsidiary, parent, intermediary, holding company, or related corporation of the bidder has been involved. The list should include the date of application; the name and address of the licensing agency; the type and number of the license; and the disposition (approval, rejection, or withdrawal) of any such application. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino, and pari-mutuel operations.

(16) Whether the bidder has ever petitioned for or declared bankruptcy or insolvency within the last seven years; if so, the filing date, docket number, and name and address of the court in which the petition or declaration was filed, and the name and address of the filing party and of the trustee should also be included.

(17) Copies of any audited financial statements and auditors' reports for the bidder and any subsidiaries for each entity's last fiscal year or, if the entity does not normally have its financial statements audited, copies of unaudited financial statements for the last two fiscal years.

(18) A list of all holding companies, business organizations, other business entities, or individuals that hold any financial interest of 5 percent or more in the bidder. This list shall describe the nature, type, terms, covenants, and priorities of any outstanding bonds, loans, mortgages, trust deeds, notes, debentures, or other forms of indebtedness issued or executed, which mature more than one year from the date of issuance.

(19) A list and copies of all notes and mortgages or other instruments of outstanding long-term debt of the bidder, with the name and address of the entity owed and the amount and purpose of each such mortgage or debt.

(20) A list of all dormant or shell company names used or owned by the bidder within the past ten years.

(21) A list of any financial or ownership interest in any gambling venture in any jurisdiction that the bidder and any parent or subsidiary owns or holds and a description of the nature and the percentage of each interest owned or held. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

(22) A list of all political contributions made by or on behalf of the bidder and any parent or subsidiary to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. The list should include the candidate's name, the office or position for which the candidate is or was running, and the amount and date of the contribution.

(23) A list of all Iowa lobbyists and political consultants utilized by the bidder and any parent or subsidiary of the bidder, the names of individuals employed by the bidder and any parent or subsidiary who act as liaisons with the lobbyists or political consultants, and descriptions of fee arrangements made with the lobbyists or political consultants. Also in-

## LOTTERY AUTHORITY, IOWA[531](cont'd)

cluded should be a statement identifying any cash fund established with respect to an Iowa lobbyist or political consultant, any pledge of any items of monetary value to a lobbyist or political consultant as a reward for obtaining commission approval of a contract, and any cash transferred in any manner to an attorney's trust account for dispersal to an Iowa lobbyist or political consultant.

(24) An organizational chart of the bidder showing its relationship to existing parent, subsidiary, and affiliated companies.

(25) A list of all persons or business entities with which the bidder has contracts or agreements worth \$1 million or more that exceed one year in duration.

(26) Authorization, in any form or forms approved by the division of criminal investigation and executed by a competent signatory of the bidder, for a review, full disclosure, and release of any and all records concerning the bidder, including but not limited to verification of filing and outstanding balance status of federal income tax returns.

**2.16(3) Bidder key personnel investigations.**

a. General provisions. The chief executive officer may require a full lottery Class L-1 department of public safety division of criminal investigation background investigation for any person identified as an officer, director, trustee, partner, sole proprietor, employee or other person by the lottery or the division of criminal investigation as a key person in a sensitive position or relationship with a bidder in a major procurement, as defined in rule 2.1(99G).

The lottery Class L-1 form shall be posted on the lottery's Web site, and is intended to serve as a vehicle for collection of background information and as an overview of the scope of the background investigations to be conducted.

The division of criminal investigation shall utilize the information provided in the lottery Class L-1 form as the basis for developing the initial scope of the key personnel investigation and due diligence to be conducted. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the lottery Class L-1 form, the division of criminal investigation shall consult with the chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

b. Class L-1 form requirements. The lottery Class L-1 form shall solicit the following information about key personnel selected to be investigated (hereinafter "subject"):

(1) The subject's name, business and residence addresses and telephone numbers, date and place of birth, social security number, height, weight, eye color, sex, and any past or present aliases used.

(2) The name and address of the subject's present employer, the subject's job title and a summary of duties, and the subject's supervisor.

(3) The subject's citizenship or alien residence status.

(4) A ten-year residential history of the subject, including addresses, dates, ownership or rental status, and landlord's or mortgage holder's name(s), address(es), and telephone number(s).

(5) The subject's marital status and, if applicable, the subject's spouse's full name, including maiden (if applicable), business and residence addresses and telephone numbers, date and place of birth, occupation, and the name and address of the spouse's present employer.

(6) Whether the subject has been divorced, legally separated, or had a marriage annulled and, if applicable, the name, birth date, and current address, if known, of the subject's

spouse or former spouse, the date and place of any applicable judicial order, and the nature of the action.

(7) The full names, including maiden (if applicable), dates of birth, and addresses of all the subject's children, including stepchildren and adopted children.

(8) The full names, including maiden (if applicable), dates of birth, most recent occupations, or retired status (if appropriate), and addresses of all parents, parents-in-law, legal guardians, and siblings of the subject. If any such person is deceased, that person's date of death, last address, and last occupation should also be given.

(9) The subject's educational background, including the names, types, and locations of any schools attended, dates of attendance, and graduation status, certificates, or degrees obtained. For purposes of this paragraph, "schools" includes all secondary, postsecondary, graduate, and professional educational institutions.

(10) If applicable, information regarding the subject's military service, including dates of service, type of discharge, and details of any court-martial proceedings in which the subject was involved.

(11) A list of all political contributions made by or on behalf of the subject to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. Such list should include the candidate's name, the office or position for which the candidate ran or is running, and the amount and date of the contribution.

(12) The state, license number, date of expiration, and name and address shown on the subject's current driver's license.

(13) A list of three personal references, including a name, address, and telephone number for each reference as well as a brief statement describing the relationship between the subject and each reference and how long the subject has been acquainted with each reference.

(14) A summary of the subject's employment record for the last ten years, including names, addresses, and telephone numbers of prior employers, dates of employment, and positions held.

(15) A list of personal litigation during the last ten years other than divorce, legal separation, or annulment proceedings to which the subject has been a party.

(16) A list of any litigation within the past ten years wherein a business entity owned by the subject, or in which the subject held an ownership interest or served as an officer or director, was a defendant and in which the defendant's conduct was allegedly criminal.

(17) A description of any known criminal investigations and dispositions thereof regarding the subject or any business entity in which the subject holds or has held an ownership interest of 5 percent or more. The description should include the name and address of the investigating agency, the nature of the investigation, and the approximate dates on which the investigation commenced and concluded.

(18) A list of any arrest, indictment, charge or conviction, or any naming as an unindicted party or coconspirator in a criminal offense involving the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. The list should include the name of the family member (if applicable); the nature of the charge, conviction or proceeding; the name and address of the governmental agency or court involved; and the disposition.

(19) A list of any pardon for any criminal offense in Iowa or any other jurisdiction pertaining to the subject or any of the following family members of the subject: children, includ-

## LOTTERY AUTHORITY, IOWA[531](cont'd)

ing stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. This list should include the name of the family member (if applicable), the offense, the reason for and date of the pardon, and the name and address of the pardoning authority.

(20) A list of any personal or business loss within the past ten years involving an insurance payment of more than \$10,000.

(21) A list of and explanation regarding any personal or business property owned by the subject that was destroyed by fire or an explosion.

(22) A list of any application to and any permit, license, certificate, or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the subject is or has been involved. The list should include the date of application, the name and address of the licensing agency, the type and number of licenses, and the disposition (approval, rejection or withdrawal) of any such application, together with a description of any financial or ownership interest in any such gambling venture. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

(23) A description of the extent of involvement, if any, the subject has or anticipates having in participation in the management or operation of the bidder.

(24) Information regarding the filing and status of state and federal income tax returns for the previous three years. Copies of said returns should also be included.

(25) A statement regarding any financial or ownership interest of 5 percent or more that the subject has or had in any active or dormant companies and any failed or abandoned business projects in which the subject was invested in 5 percent or more of the business project or was a significant planner, to the extent that such interest or interests are within the scope of a gambling venture or with an Iowa lottery vendor.

(26) Such sworn consents and authorizations as may be requested by the division of criminal investigation to gain access to records pertaining to the subject for use in investigating the information furnished by the subject in the lottery Class L-1 form and any derivation thereof, including without limitation the subject's federal and state tax records and any other records, public or private, including confidential and criminal history records.

**2.16(4)** Alternative sources for business entity investigations. In lieu of a division of criminal investigation lottery business entity investigation or any component thereof, the lottery chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

**531—2.17(99G) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Authority Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actu-

ally be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

## CHAPTER 12 LICENSING

### **531—12.1(99G,252J) License eligibility criteria.**

**12.1(1)** A person, partnership, unincorporated association, authority, or other business entity shall not be selected as a lottery retailer if the person or entity meets any of the following conditions:

a. Has been convicted of a criminal offense related to the security or integrity of the lottery in Iowa or any other jurisdiction.

b. Has been convicted of any illegal gambling activity, false statements, perjury, fraud, or a felony in Iowa or any other jurisdiction.

c. Has been found to have violated the provisions of Iowa Code Supplement chapter 99G, or any regulation, policy, or procedure of the lottery, unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature.

d. Is a vendor or any employee or agent of any vendor doing business with the lottery.

e. Resides in the same household as an officer of the lottery.

f. If an individual, is less than 18 years of age.

g. Does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

h. Has not demonstrated that the applicant is the true owner of the business proposed to be licensed and that all persons holding at least a 10 percent ownership interest in the applicant's business have been disclosed.

i. Has knowingly made a false statement of material fact to the authority.

**12.1(2)** The applicant shall be current in filing all applicable tax returns to the state of Iowa and in payment of all taxes, interest, and penalties owed to the state of Iowa, excluding items under formal appeal pursuant to applicable statutes.

**12.1(3)** The lottery will deny a license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.7(1), 99G.9(3), 99G.21(2), and 99G.24.

**531—12.2(99G,252J) Factors relevant to license issuance.** The lottery may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code Supplement chapter 99G and these rules. In exercising its licensing discretion, the lottery shall consider the following factors: the background and reputation of the applicant in the community for honesty and integrity; the financial responsibility and security of the person and business or activity; the type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity

LOTTERY AUTHORITY, IOWA[531](cont'd)

of the lottery; the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales; the accuracy of the information supplied in the application for a license; the applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; if an individual, indebtedness owed for child support payments; and any other criteria or information relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24(5).

**531—12.3(99G) Applicant or person defined.** For purposes of determining whether an applicant or person is eligible for a license, the term "applicant" or "person" shall include the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, persons owning at least 10 percent or more of a limited liability company, the manager or managers of a limited liability company, and any legal entity applying for a license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.24.

**531—12.4(99G,252J) Lottery licenses.**

**12.4(1)** The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: scratch tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

**12.4(2)** Any eligible applicant may apply for a license to act as a retailer by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

**12.4(3)** All lottery license applications must be accompanied by a nonrefundable fee of \$25.

**12.4(4)** Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

**12.4(5)** The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

**12.4(6)** A limited number of retailers may be selected as licensees from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The lottery may refuse to accept license applications for a period of time if the lottery determines that the number of existing licensees is adequate to market any lottery product.

**12.4(7)** The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

**531—12.5(99G) Transfer of licenses prohibited.** Lottery licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than the licensed premises specified on the license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.

**531—12.6(99G) Expiration of licenses.** A license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. A license that does not have an expiration date will continue indefinitely until surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

**531—12.7(99G,252J) Provisional licenses.** The lottery may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

**531—12.8(99G) Off-premises licenses.** Any licensed retailer who has been issued a license or provisional license to sell tickets may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The lottery must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the lottery to govern off-premises sales. An off-premises license shall expire at the time designated on the off-premises license. An off-premises license may be renewed at the lottery's discretion.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.30.

**531—12.9(99G) Duplicate licenses.** Upon the loss, mutilation, or destruction of any license issued by the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

LOTTERY AUTHORITY, IOWA[531](cont'd)

**531—12.10(99G) Reporting changes in circumstances of the retailer.** Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.27(1).

**531—12.11(99G) License not a vested right.** The possession of a license issued by the lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a legal right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.21(2), and 99G.27.

**531—12.12(99G,252J) Suspension or revocation of a license.**

**12.12(1)** The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G, these rules, or the license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licensees.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. A history of thefts or other forms of losses of tickets or revenue from the business.

g. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, when the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

q. Allowing activities on the licensed premises that could compromise the dignity of the state.

r. Failing to accurately or timely account or pay for lottery products, lottery games, revenues, or prizes as required by the lottery.

s. Failing for or being placed in bankruptcy or receivership.

t. Engaging in any conduct likely to result in injury to the property, revenue, or reputation of the lottery.

u. Making any material change, as determined in the sole discretion of the lottery, in any matter considered by the lottery in executing the contract with the retailer.

**12.12(2)** The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

**12.12(3)** If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 531—12.13(99G,252J).

**12.12(4)** Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.30(3). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery shall suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery shall suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license shall be suspended for one year.

**12.12(5)** Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property. The lottery will settle the retailer's account as if the retailer had terminated its relationship with the lottery voluntarily.

LOTTERY AUTHORITY, IOWA[531](cont'd)

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30(3), and 99G.35.

**531—12.13(99G,252J) Methods of service.** The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 531—12.12(99G,252J) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. If requested by the licensee, a hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24.

**531—12.14(99G,252J) Licensee's obligation.** Licensees and license applicants shall keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

**531—12.15(99G,252J) Calculating the effective date.** In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 252J.8 and 252J.9 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

**531—12.16(99G) Financial responsibility.** The lottery shall use the following guidelines to determine financial responsibility for a retailer seeking a license to sell lottery products.

**12.16(1) Sole proprietorship.** The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

**12.16(2) Partnership.** If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

**12.16(3) Fraternal or civic associations.** If the license applicant is a fraternal association, civic organization or other

nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 12.16(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

**12.16(4) Corporations and limited liability companies in existence two years or more** if a credit risk appraisal is available through a financial and credit reporting entity. If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the license applicant must meet all of the following financial responsibility guidelines:

a. The license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

**12.16(5) Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.** If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 12.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 12.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

**12.16(6) Bonding requirements.** With respect to any license applicant whose credit history does not meet the guidelines described in subrules 12.16(1) through 12.16(5), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The following minimum amounts will be required:

a. Sale of pull-tab tickets only, \$500.

b. Sale of instant tickets with or without pull-tab tickets, \$1,500.

c. Sale of on-line games with or without instant and pull-tab tickets, \$2,500.

**12.16(7) Holding period for bond.** The lottery will hold the bond provided by license applicant for a minimum time



## LOTTERY AUTHORITY, IOWA[531](cont'd)

period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

**531—12.17(99G) Monitor vending machine retailers.** Unless specifically noted in 531—Chapter 14, the rules contained in this chapter do not apply to entities holding licenses pursuant to 531—Chapter 14.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

#### CHAPTER 14 MONITOR VENDING MACHINES

**531—14.1(99G,252J) License eligibility criteria.** An applicant shall be eligible to hold a monitor vending machine (MVM) retailer license only if the applicant meets the requirements set forth in rule 531—12.1(99G,252J). An applicant shall be eligible to hold an MVM premises license only if the applicant meets the requirements set forth in rule 531—14.5(99G).

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.7(1), 99G.9(3), 99G.21(2), and 99G.24.

**531—14.2(99G,252J) Factors relevant to license issuance.** The lottery may issue an MVM license to any applicant who meets the eligibility criteria established by Iowa Code Supplement chapter 99G and these rules. In exercising its licensing discretion the lottery shall consider the factors identified in rule 531—12.2(99G,252J).

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24(5).

**531—14.3(99G) Definitions.** For purposes of this chapter, the following definitions shall apply:

“Applicant” and “person” shall have the definition set forth in rule 531—12.3(99G).

“Monitor vending machine” means a vending machine that dispenses or prints and dispenses lottery tickets that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets. Each monitor vending machine shall have a video monitor for display of ticket symbols and audio capabilities to aid in play of a game.

“MVM” means monitor vending machine.

“MVM distributor” means a person or entity, other than an MVM manufacturer or an MVM retailer, that possesses an MVM license and that purchases or leases MVMs and leases or sells MVMs to MVM retailers.

“MVM license” means either an MVM retailer license or an MVM premises license issued pursuant to these rules, or both.

“MVM premises” means a business establishment or other location where one or more MVMs are located or are proposed to be located.

“MVM premises operator” means the person who owns the primary business or enterprise conducted at the MVM premises.

“MVM retailer” means a person or entity that possesses an MVM retailer license and sells lottery products from one or more lottery-approved MVMs that are owned or leased by the person or entity and that are located on premises owned or

managed by the MVM retailer or by an MVM premises operator.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

#### **531—14.4(99G,252J) MVM retailer licenses.**

**14.4(1)** Any MVM retailer or MVM distributor must possess an MVM retailer license before purchasing, selling, or leasing any MVMs in the state of Iowa.

**14.4(2)** The lottery has discretion to license a qualified applicant to sell lottery products from MVMs. An MVM retailer license authorizes the licensee to sell only the type of lottery products specified on the license and only from MVMs that have been certified by the chief executive officer of the lottery pursuant to rule 14.19(99G). MVM retailer licenses also allow the licensees to distribute lottery-certified MVMs. The lottery shall maintain a list of MVMs that have been certified by the chief executive officer as meeting lottery requirements.

**14.4(3)** An MVM retailer license is not limited to a specific location, but MVMs may only be used to sell lottery products on premises that have been licensed pursuant to rule 14.5(99G).

**14.4(4)** Any eligible applicant may apply for an MVM retailer license by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

**14.4(5)** All lottery MVM license applications must be accompanied by a nonrefundable fee of \$25.

**14.4(6)** The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

**14.4(7)** A limited number of MVM retailers may be selected from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve the public convenience. The lottery may refuse to accept MVM retailer license applications for a period of time if the lottery determines that the number of existing MVM retailer licensees is adequate to market lottery products.

**14.4(8)** The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

**14.4(9)** A lottery licensee holding a lottery license pursuant to the rules contained in 531—Chapters 12 and 13 may sell lottery products from MVMs only if that licensee possesses a separate MVM license. Any premises on which MVMs will be located must be licensed pursuant to rule 14.5(99G), even if the premises operator holds a lottery license pursuant to the rules contained in 531—Chapters 12 and 13.

**14.4(10)** Notwithstanding any of the foregoing, licensees of the Iowa racing and gaming commission making application for an MVM retailer license will not be required to submit to the lottery's criminal background check.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

LOTTERY AUTHORITY, IOWA[531](cont'd)

**531—14.5(99G) MVM premises license.**

**14.5(1)** Before an MVM may be used to vend lottery products, the premises on which the MVM is to be located must be licensed by the chief executive officer of the lottery. An MVM premises shall be licensed only after all of the following requirements have been met:

1. The MVM premises operator shall have passed a criminal background check.

2. The MVM premises shall have been demonstrated to be compatible with the dignity of the state.

3. The chief executive officer shall have determined that the MVM premises is an age-controlled environment. Examples of age-controlled environments are premises where the age of patrons is monitored by the employees of the establishment.

4. All lottery MVM premises license applications must be accompanied by a nonrefundable fee of \$25.

**14.5(2)** The MVM premises operator shall post its MVM license, or a facsimile, at the MVM premises. The license or a facsimile thereof may be affixed to the MVM.

**14.5(3)** Any premises on which MVMs will be located must be licensed pursuant to rule 14.5(99G), even if the premises operator holds a lottery license pursuant to the rules contained in 531—Chapters 12 and 13.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.

**531—14.6(99G) Transfer of MVM licenses prohibited.**

MVM licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than those permitted by lottery rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.

**531—14.7(99G) Expiration of MVM licenses.** An MVM license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. An MVM license that does not have an expiration date will continue indefinitely until it is surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

**531—14.8(99G,252J) Provisional MVM licenses.** The lottery may issue a provisional MVM license to an applicant after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, if applicable, and completion of a preliminary background check. The provisional MVM license shall expire at the time of issuance of the requested MVM license or 90 days from the date the provisional MVM license was issued, whichever occurs first, unless the provisional MVM license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional MVM license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the MVM license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.25, and 99G.27.

**531—14.9(99G) MVM placement and operation.** Licensed MVM retailers shall locate their MVMs at their discretion, subject to the following requirements:

1. All MVMs shall be located only on licensed MVM premises.

2. No MVM shall be located in any establishment that is incompatible with the dignity of the state.

3. Only MVMs certified by the lottery's chief executive officer pursuant to rule 14.19(99G) may be placed in licensed MVM premises. A list of such certified MVMs may be obtained from the lottery.

4. Only graphics displays and audio authorized by the lottery shall be used on MVMs. MVM retailers shall make no changes, alterations, or additions to the lottery-authorized graphics displays, the lottery-authorized audio played by the MVMs, or to the cabinet exteriors of MVMs.

5. In cases where an MVM is located on an MVM premises not owned by the MVM retailer, the MVM retailer shall be solely responsible for securing the rights necessary to locate the MVM on such premises and shall provide proof of such rights to the lottery upon request. Under no circumstances shall the lottery be responsible to the MVM premises operator or owner as a consequence of the placement of an MVM by an MVM retailer.

6. Under no circumstances shall the lottery be responsible for the expense of installing electrical circuits or telecommunications lines or for any power or telecommunications services necessary to operate an MVM.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), and 99G.21.

**531—14.10(99G) Duplicate licenses.** Upon the loss, mutilation, or destruction of any MVM license issued by the lottery, application for a duplicate shall be made. A statement signed by the MVM retailer, distributor, or premises operator that details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

**531—14.11(99G) Reporting changes in circumstances of the MVM licensee.** Every change in business structure of an MVM licensee, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of an MVM licensee must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.27(1).

**531—14.12(99G) MVM license not a vested right.** The possession of an MVM license issued by the lottery to any person or entity to act as an MVM retailer, MVM distributor, or MVM premises operator is a privilege personal to that person or entity and is not a legal right. The possession of an MVM license issued by the lottery does not automatically en-

## LOTTERY AUTHORITY, IOWA[531](cont'd)

title that person or entity to lease or purchase an MVM or to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.7.

**531—14.13(99G,252J) Suspension or revocation of an MVM retailer license.**

**14.13(1)** The lottery may suspend or revoke any MVM retailer license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for MVM retailer license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G, these rules, or the MVM license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licensed MVM retailers.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. The MVM retailer has a history of thefts or other forms of losses of tickets or revenue.

g. Violating federal, state, or local law or allowing the violation of any of these laws in connection with the operation of MVMs.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing promptly to produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context that is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, when the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

**14.13(2)** The effective date of revocation or suspension of an MVM retailer license, or denial of the issuance or renewal of an MVM retailer license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days follow-

ing service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

**14.13(3)** If an MVM retailer license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the license upon 15 days' notice served in conformance with rule 531—12.13(99G,252J).

**14.13(4)** Upon revocation or suspension of an MVM retailer license of 30 days or longer, the MVM retailer shall surrender to the lottery, by a date designated by the lottery, the MVM license, lottery identification card, and all other lottery property. The lottery will settle the MVM retailer's account as if the MVM retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30(3), and 99G.35.

**531—14.14(99G,252J) Suspension or revocation of an MVM premises license.**

**14.14(1)** The lottery may suspend or revoke any MVM premises license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for MVM premises license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G or these rules.

c. Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.

e. Obtaining an MVM premises license by fraud, misrepresentation, concealment or through inadvertence or mistake.

f. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

g. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

h. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

i. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

j. When the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the MVM premises operator who is an individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

k. A history of thefts or other forms of losses of tickets or revenue occurs at the MVM premises.

l. Conduct or business activities on the premises which would undermine the public confidence in the lottery.

m. Substantiated instances of purchases of lottery tickets by underage persons on the MVM premises.

**14.14(2)** The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice.

LOTTERY AUTHORITY, IOWA[531](cont'd)

All other notices of revocation or suspension shall be 20 days following service upon a licensee.

**14.14(3)** Upon suspicion that an underage player has purchased one or more lottery products from an MVM, the lottery will investigate and provide a written warning to the MVM retailer and the MVM premises operator describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.24(9). In the event the lottery can substantiate the claim that an underage player has purchased a product from an MVM, the lottery shall suspend the license of the MVM premises in question for 7 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM a second time in a period of one year from the date of the first event on the same MVM premises, the lottery shall suspend the MVM premises license for a period of 30 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM premises in question for one year.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

**531—14.15(99G,252J) Methods of service.** Notice required by Iowa Code section 252J.8 and notice of a license revocation or a suspension for the reasons described in rules 14.13(99G,252J) and 14.14 (99G,252J) shall be as set forth in rule 531—12.13(99G,252J). The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24.

**531—14.16(99G,252J) Licensee's obligation.** MVM retailers, distributors, premises operators, and license applicants shall keep the lottery informed of all court actions and all relevant child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

**531—14.17(99G,252J) Calculating the effective date.** In the event an MVM licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of an MVM license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 252J.8 and 252J.9 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

**531—14.18(99G) Financial responsibility of MVM retailers and MVM distributors.** The lottery shall use the following guidelines to determine financial responsibility for a person seeking an MVM retailer license.

**14.18(1) Sole proprietorship.** The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

**14.18(2) Partnership.** If the MVM license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 14.18(1). If the credit history discloses that the requirements of subrule 14.18(1) are satisfied, the lottery will not require a bond.

**14.18(3) Fraternal or civic associations.** If the MVM license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 14.18(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete as determined in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 14.18(1). If the credit history discloses that the requirements of subrule 14.18(1) are satisfied, the lottery will not require a bond.

**14.18(4) Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.** If the MVM license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the MVM license applicant must meet the following financial responsibility guidelines:

a. The MVM license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better. If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

**14.18(5) Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.** If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 14.18(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 14.18(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

**14.18(6) Bonding requirements.** With respect to any MVM license applicant whose credit history does not meet the guidelines described in subrules 14.18(1) through

## LOTTERY AUTHORITY, IOWA[531](cont'd)

14.18(5), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amount of \$250 per MVM to be operated by the MVM license applicant; provided, however, that the total amount of such bond shall not exceed \$50,000.

**14.18(7) Holding period for bond.** The lottery will hold the bond provided by the license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

**531—14.19(99G) MVM certification.** Before an MVM may be used to vend lottery products, it must be certified by the chief executive officer of the lottery. No MVM shall be placed in an MVM premises prior to being certified by the lottery. An MVM shall be certified only after all of the following requirements have been met:

**14.19(1)** The manufacturer of the MVM shall have passed a criminal background check pursuant to rule 531—2.16(99G).

**14.19(2)** The manufacturer shall have passed a financial responsibility background check.

**14.19(3)** The manufacturer shall demonstrate to the lottery's satisfaction that the MVM can perform all of the following:

- a. Reliably vend lottery-approved tickets, either pre-printed or printed on demand from a predetermined electronic "pack" of tickets.
- b. Display, in the process of vending tickets, lottery-approved graphics and sound, indicating whether the vended ticket is a winner.
- c. Communicate reliably with a central computer system, as described below, in order to transmit data.
- d. Disable itself if it fails to communicate with the central computer system for a period of 48 hours.
- e. Keep lottery tickets and cash receipts secure.
- f. Account for the number of tickets sold and prizes awarded.

**14.19(4)** The manufacturer shall demonstrate the ability to securely, reliably, and consistently produce either pre-printed tickets or electronic "packs" of tickets that meet the lottery's specifications as set forth in the game rules.

**14.19(5)** The manufacturer shall demonstrate that the MVM can operate reliably with a central computer system capable, at a minimum, of all of the following:

- a. Communicating with MVMs located in all parts of the state.
- b. Retrieving data from MVMs.
- c. Transmitting data to MVMs.
- d. Storing data received from MVMs.
- e. Allowing secure access to data by the lottery and MVM retailers.
- f. Producing printed reports in a format usable by the lottery.
- g. Performing security checks on MVMs.
- h. Consistently and reliably operating at least 16 hours per day.

**14.19(6)** The MVM manufacturer must commit contractually to provide the lottery with the data required by the lottery in a timely manner. The lottery may negotiate directly with manufacturers of certified MVMs for these services.

**14.19(7)** The manufacturer shall pay a fee of \$25, plus all actual costs incurred by the lottery in performing the necessary criminal background and financial responsibility

checks. The lottery may require a manufacturer to pay the estimated cost of the criminal background and financial responsibility checks in advance.

**14.19(8)** As a condition of certification, the manufacturer shall provide to the lottery a working example of each model of MVM it proposes to have certified for testing and troubleshooting purposes. The lottery may keep the working example for such time as the model remains certified.

**14.19(9)** The certification process, including the financial responsibility background check, is solely for the use of the lottery. The lottery does not warrant the financial stability of any MVM manufacturer, and lottery certification of an MVM model shall not be considered to constitute a representation or a warranty that a particular MVM of that model is merchantable, fit for any particular purpose, or free of defects. MVM retailers and distributors shall conduct their own due diligence, including financial responsibility, prior to purchasing or leasing an MVM.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.

**531—14.20(99G,252J) Suspension or revocation of certification of an MVM.**

**14.20(1)** The lottery may suspend or revoke any certification made pursuant to these rules for one or more of the following reasons:

- a. Failing to meet or maintain the certification criteria established by Iowa Code Supplement chapter 99G or these rules.
- b. Violating any of the provisions of Iowa Code Supplement chapter 99G or these rules.
- c. Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.
- d. Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.
- e. Obtaining a certification by fraud, misrepresentation, concealment or through inadvertence or mistake.
- f. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.
- g. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.
- h. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.
- i. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.
- j. Repeated failure or inability of the MVM or the associated central computer system to operate properly.
- k. The occurrence of any event or the existence of any state of facts that would cause the MVM manufacturer to fail a criminal background check or a financial responsibility check.

**14.20(2)** The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

LOTTERY AUTHORITY, IOWA[531](cont'd)

**531—14.21(99G) Requirements for the sale of tickets.**

**14.21(1)** Prior to the vending of any lottery products by an MVM retailer, the lottery and the MVM retailer shall enter into a written agreement specifying the share of revenue to be remitted to the lottery, providing for the provisioning of tickets and paper stock, and other matters as the parties shall agree upon.

**14.21(2)** Tickets shall be sold at the price designated by the lottery unless the lottery specifically authorizes their sale at a different price.

**14.21(3)** No MVM retailer or any employee, member, or agent of an MVM retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

**14.21(4)** MVM retailers shall arrange for the MVM premises operator or agent(s) or employees of the MVM premises operator to pay all prizes less than \$600 during normal business hours at the MVM premises where the prize-winning ticket was vended. Prizes of \$600 or more shall be paid at a lottery regional office or at lottery headquarters in Des Moines. Prizes to be claimed from an MVM premises operator must be claimed prior to the MVM premises' first close of business following the vending of the winning ticket.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.30, and 99G.31.

**531—14.22(99G) Ownership of tickets and other property.** All tickets or electronic "packs" of tickets accepted by a licensed MVM retailer are the property of the MVM retailer. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets that become lost, stolen, or damaged. The lottery may credit MVM retailers for lost, stolen, or damaged tickets if the MVM retailer licensee has been billed for the lost, stolen, or damaged tickets and only if the lottery determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all lottery property provided to an MVM retailer for use in selling products, as opposed to property and tickets sold to an MVM retailer, remains the property of the lottery. The retailer shall deliver lottery property to the lottery upon request.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.24, and 99G.27.

**531—14.23(99G) MVM retailer compensation.** The lottery, with board approval, shall set the amount of MVM retailer compensation.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.24.

**531—14.24(99G) MVM retailer payment methods.** MVM retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer (EFT) from the MVM retailer's account. The lottery may allow an MVM retailer to make payments by another method if the MVM retailer can show that the electronic funds transfer system imposes a significant hardship on the MVM retailer or if the lottery determines that the MVM retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.27, 99G.28, and 99G.40.

**531—14.25(99G) Dishonored checks and electronic funds transfers.** Any payment made to the lottery by an applicant for a license or by a licensed MVM retailer either by a check which is dishonored or by an electronic funds transfer which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspen-

sion or revocation of an existing license. The lottery may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or EFT. The lottery may also alter the payment terms of an MVM retailer's license and require an MVM retailer to reimburse the lottery for costs that occur as a result of a dishonored check or EFT. The lottery may disable all MVMs associated with the licensed MVM retailer until such time as the lottery receives certified funds to compensate for the dishonored item.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, and 99G.27.

**531—14.26(99G) Inspection of lottery materials and licensed premises.** MVM retailers and MVM premises operators shall allow the lottery to inspect lottery materials, tickets, and the premises. All books and records pertaining to the MVM retailer's and the MVM premises operator's lottery activities shall be available to the lottery for inspection and copying during the normal business hours of the MVM retailer or the MVM premises operator and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the MVM retailer's and MVM premises operator's lottery activities are subject to seizure by the lottery without prior notice.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, 99G.27, and 99G.28.

**531—14.27(99G) Payment of MVM ticket prizes.** Prizes won by MVM tickets may be paid only by an agent or employee of the MVM premises operator where the winning ticket was vended or by an agent or employee of the Iowa lottery authority, as specified in subrule 14.21(4). If the MVM premises operator is a nonprofit organization, members of the organization may also pay prizes if authorized by the organization. The MVM retailer shall be responsible for ensuring that prizes up to \$600 are paid.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.30, and 99G.31.

**531—14.28(99G) Ticket sales restrictions.**

**14.28(1)** The lottery reserves the right to limit or terminate the sale of tickets from any MVM or at any MVM premises if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

**14.28(2)** Tickets shall not be purchased from MVMs by any officer, employee, agent, or subcontractor of any MVM retailer, MVM distributor, or manufacturer, or to any spouse, child, sibling, or parent residing as a member of the same household in the principal place of residence of any such person.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30, and 99G.31.

**531—14.29(99G) Transfer of MVMs.** MVMs may only be transferred to authorized entities.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

**531—14.30(99G) Tax reporting.** MVM retailers are responsible for tax reporting requirements related to MVM premises locations.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

The Iowa Lottery Authority Board adopted these rules on March 9, 2004.

LOTTERY AUTHORITY, IOWA[531](cont'd)

These rules are intended to implement Iowa Code section 17A.3(1)“a” and Iowa Code Supplement chapter 99G.

These rules will become effective May 7, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 1 to 6, 11 to 14, 18 to 20] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 2770B**, IAB 9/17/03.

[Filed 3/12/04, effective 5/7/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

## ARC 3238B

### PHARMACY EXAMINERS BOARD[657]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby amends Chapter 3, “Pharmacy Technicians,” Iowa Administrative Code.

The amendment clarifies the requirements for maintaining confidentiality of patient information as those requirements relate to pharmacy technicians.

Requests for waiver or variance of the provisions of this rule will not be considered because these requirements are not discretionary and are consistent with requirements under the federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) privacy rules.

Notice of Intended Action was published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2647B**. The adopted amendment is identical to that published under Notice.

The amendment was approved during the October 14, 2003, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on May 5, 2004.

This amendment is intended to implement Iowa Code section 155A.6.

The following amendment is adopted.

Amend subrule 3.28(2) as follows:

**3.28(2) Confidentiality.** In the absence of express written ~~consent authorization~~ from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, or a person duly authorized by law to receive such information, *or as otherwise provided in rule 657—8.16(124,155A)*, any of the following:

a. The contents of any prescription drug order or medication order or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient;

b. Any patient's name, address, social security number, or any information that could be used to identify the patient;

b c. The nature, extent, or degree of illness suffered by any patient; or

e d. Any medical information furnished by the prescriber.

[Filed 3/11/04, effective 5/5/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

## ARC 3239B

### PHARMACY EXAMINERS BOARD[657]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Pharmacy Examiners hereby amends Chapter 8, “Universal Practice Standards,” Iowa Administrative Code.

The amendments change the terms “consent” and “release” to “authorization” in rules relating to the authorization executed by the patient for release of confidential patient information or for the delivery of a patient's medications to anyone other than the patient or patient's caregiver. New subrule 8.4(4) is added to require that a pharmacist wear a visible identification badge that identifies the individual as a pharmacist and includes at least the pharmacist's first name, when the pharmacist is on duty.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2645B**. The adopted amendments are identical to those published under Notice.

The amendments were approved during the October 14, 2003, meeting of the Board of Pharmacy Examiners.

These amendments will become effective on May 5, 2004.

These amendments are intended to implement Iowa Code sections 124.301, 147.72, 155A.13, and 155A.20.

The following amendments are adopted.

ITEM 1. Amend rule 657—8.4(155A) by adopting the following **new** subrule 8.4(4):

**8.4(4) Identification badge.** A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

ITEM 2. Amend subrule **8.15(1)**, paragraph “d,” as follows:

d. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written ~~consent authorization~~ of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written ~~consent authorization~~; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

ITEM 3. Amend subrule **8.16(2)**, paragraph “a,” as follows:

a. Pursuant to the express written ~~consent or release authorization~~ of the patient or the order or direction of a court.

## PHARMACY EXAMINERS BOARD[657](cont'd)

ITEM 4. Amend subrule **8.16(3)** by adopting the following **new** paragraph "**d**":

d. Disclosing information necessary for the processing of claims for payment of health care operations or services.

[Filed 3/11/04, effective 5/5/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

**ARC 3240B****PHARMACY EXAMINERS  
BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 124.301, the Board of Pharmacy Examiners hereby amends Chapter 20, "Pharmacy Compounding Practices," Iowa Administrative Code.

The amendment adds new subrule 20.10(6), which clearly identifies the information required to be included on the prescription container label affixed to the dispensing container of any compounded drug product dispensed by a pharmacy. The amendment also renumbers current subrules 20.10(6) and 20.10(7) as subrules 20.10(7) and 20.10(8), respectively.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the August 6, 2003, Iowa Administrative Bulletin as **ARC 2644B**. The adopted amendment differs from that published under Notice. Paragraph "g" of new subrule 20.10(6) is amended to parenthetically identify the term "bulk drug substance" to also mean "active ingredient." The same paragraph is further amended to permit the use of auxiliary labels to accommodate the quantity of bulk drug substance information required to be included on the label.

The amendment was approved during the October 14, 2003, meeting of the Board of Pharmacy Examiners.

This amendment will become effective on May 5, 2004.

This amendment is intended to implement Iowa Code sections 126.10 and 155A.28.

The following amendment is adopted.

Amend rule 657—20.10(124,126,155A) by adding the following **new** subrule 20.10(6) and renumbering existing subrules **20.10(6)** and **20.10(7)** as **20.10(7)** and **20.10(8)**:

**20.10(6)** Label information required. The label affixed to or on the dispensing container of any compounded drug product dispensed by a pharmacy pursuant to a prescription drug order, excluding a sterile product compounded pursuant to 657—8.30(126,155A), shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name, telephone number, and address of the pharmacy;

c. The name of the patient or, if such drug is prescribed and compounded for an animal, the species of the animal and the name of its owner;

d. The name of the prescribing practitioner;

e. The date the compounded drug product is dispensed;

f. The directions or instructions for use, including precautions to be observed;

g. The name and quantity or percentage of each bulk drug substance (active ingredient) contained in the compounded drug product. The use of auxiliary labels to accommodate this information is acceptable;

h. The initials or other unique identification of the dispensing pharmacist.

[Filed 3/11/04, effective 5/5/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

**ARC 3268B****PUBLIC HEALTH  
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health amends Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists," Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following itemize the changes.

Items 1, 4, 7, 12, 22, 37, and 52 amend the rules to reflect current federal regulations.

Items 2 and 23 amend the definitions to meet NRC compatibility requirements.

Item 3 adds an inspection fee for mammography units not covered under the current inspection fee schedule.

Items 5, 8, 10, 14, 17, 18, 19, 24, 48, and 49 correct and clarify terminology.

Item 6 adds requirements for a well logging license to meet NRC compatibility requirements.

Item 9 adds wording to eliminate the requirement for certain X-ray rooms to be posted with caution signs in order to meet national standards.

Items 11, 28, 29, and 30 add language to address new technology.

Item 13 corrects wording from a previous amendment which was not submitted correctly.

Item 15 rescinds a subparagraph whose substance has been appropriately incorporated elsewhere.

Item 16 adds a time requirement for maintaining records, removes items that are no longer necessary because of new technology, and renumbers the subparagraphs.

Item 20 changes wording to require that the patient's physician do a follow-up instead of the surgeon who may not see the patient on a regular basis.

Item 21 incorporates language appropriate to the rule and expands it for clarity.

Items 25, 26, 27, and 42 amend the rules to meet NRC compatibility requirements.

Item 31 adds language to allow probation for disciplinary actions.



## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Item 32 expands the criteria for disciplinary actions to include all modalities in the chapter.

Item 33 adds a penalty for working without a permit issued under Chapter 42. The purpose of the penalty is to encourage new graduates to get the permit before they start working as is currently required.

Item 34 adds a new category for disciplinary actions because of the increase in the number of individuals who are not submitting proper documentation.

Item 35 adopts new language for limited radiographers who wish to be trained in pediatric radiography. This change was recommended by many doctors.

Item 36 clarifies that the required test is for the general radiography category.

Item 38 corrects references.

Items 39, 45, 47, and 51 change the number of years that records must be maintained in order to meet NRC compatibility requirements.

Items 40 and 44 delete language referring to forms the agency no longer issues.

Items 41, 43, and 50 rescind the original paragraphs and replace them with revised paragraphs to meet NRC compatibility requirements.

Item 46 adopts a new subrule to meet NRC compatibility requirements.

Item 53 adopts new requirements for tanning facility operators. The first paragraph will affect operators of in-home tanning facilities. The second will require training every five years instead of the current one-time training. This change should create a good periodic review of the rules for operators.

Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3147B**. A public hearing was held on February 24, 2004. No one attended the hearing. Three sets of written comments were received and reviewed, and changes were incorporated as appropriate. The changes made from the Notice of Intended Action are as follows:

1. In Item 13, the following sentence was added to allow flexibility during healing arts procedures: "A verbal order may be issued provided the licensed practitioner is directly supervising the procedure and the order is documented in the patient's record after the procedure is completed." The introductory paragraph of subparagraph 41.1(3)"a"(7) now reads as follows:

"(7) Individuals shall not be exposed to the useful beam unless (1) the radiation exposure occurs in the context of a previously established professional relationship between a licensed practitioner of the healing arts or a licensed registered

nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152 and a patient, which includes a physical examination by the practitioner of the patient unless such examination is not clinically indicated; and (2) such practitioner issues a written order for the radiation exposure. The written order shall be issued prior to the exposure unless the exposure results from care provided in an emergency or surgery setting. A verbal order may be issued provided the licensed practitioner is directly supervising the procedure and the order is documented in the patient's record after the procedure is completed. This provision specifically prohibits deliberate exposure for the following purposes:"

2. In Item 17, two sentences were added to the end of numbered paragraph 41.1(3)"f"(1)"2" to allow justified deviations for special procedures or situations where no manufacturer's recommendations are available. The paragraph now reads as follows:

"2. Film shall be processed in accordance with the time-temperature relationships recommended by the film developer manufacturer. The specified developer temperature and immersion time shall be posted in the darkroom. Deviations from the manufacturer's recommendations shall be in writing and on file at the facility. Documentation shall include justification for the deviation."

3. In Item 45, in paragraph 45.1(12)"c," the phrase "until the agency authorizes disposal" was replaced with "for three years after they are recorded." This change is an NRC compatibility recommendation. The paragraph now reads as follows:

"c. Records of pocket dosimeter readings of personnel exposures and yearly operability checks required in 45.1(12)"d" shall be maintained for three years by the licensee or registrant for agency inspection. If the dosimeter readings were used to determine external radiation dose (i.e., no TLD or film badge exposure records exist), the records shall be maintained for three years after they are recorded. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged film badges, OSLs, or TLDs, shall be maintained until the agency terminates the license."

4. In Item 51, changes were made to 641—Chapter 45, Appendix C, "Time requirements for Record Keeping," in order to meet NRC compatibility recommendations. The "Specific Section" reference for leak test records was corrected from 45.3(4) to 45.3(5). For the following entries, the time intervals required for record keeping were changed as noted:

Specific Section	Name of Record	Time Interval Required for Record Keeping
45.1(7)	Utilization logs.	<del>Until disposal is authorized by the agency</del> 3 years.
45.1(10)	Training and testing records.	<del>Until disposal is authorized by the agency</del> 3 years.
45.1(12)	Pocket dosimeter readings.	<del>2 3 years or until disposal is authorized by the agency if dosimeters were used to determine external radiation dose.</del>
	Pocket dosimeter calibrations.	2 years.
	Film badge, OSL device, or TLD reports.	Until disposal is authorized by the agency.
	Alarming ratemeter calibrations.	2 years.
	Alarming ratemeter functions.	2 years.
45.1(19)	Current operating and emergency procedures.	Until the license is terminated.
	Superseded material.	3 years after change.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The State Board of Health adopted these amendments on March 10, 2004.

These amendments will become effective May 5, 2004.

These amendments are intended to implement Iowa Code chapter 136C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 38 to 42, 45, 46] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3147B**, IAB 2/4/04.

[Filed 3/12/04, effective 5/5/04]

[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

## **ARC 3263B**

### **PUBLIC HEALTH DEPARTMENT[641]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.105C, the Department of Public Health hereby amends Chapter 69, Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” Iowa Administrative Code.

This chapter implements a program to require individuals who perform renovation, remodeling, and repainting of target housing for compensation to provide an approved lead hazard information pamphlet to the owner and occupant of the housing prior to commencing the work. Iowa law stipulates that the rules can take effect only after the Department of Public Health has obtained authorization from the U.S. Environmental Protection Agency (EPA) for the Department's program to require lead hazard notification prior to renovation, remodeling, and repainting of target housing. Iowa's program was authorized by the EPA on July 13, 1999.

The amendments incorporate into subrules 69.3(2) and 69.4(2) changes required by the EPA and add procedures for administrative enforcement.

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as EPA regulations, which do not allow variances or waivers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3148B**. A public hearing was held over the Iowa Communications Network on February 24, 2004. No comments were received. These amendments are identical to the amendments published under Notice of Intended Action.

The State Board of Health adopted these amendments on March 10, 2004.

These amendments will become effective on May 5, 2004.

These amendments are intended to implement Iowa Code section 135.105C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [69.2, 69.3(2), 69.4(2), 69.9 catchwords, 69.9(2), 69.10, 69.11] is being omitted. These amendments

are identical to those published under Notice as **ARC 3148B**, IAB 2/4/04.

[Filed 3/12/04, effective 5/5/04]

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[For replacement pages for IAC, see IAC Supplement 3/31/04.]

## **ARC 3269B**

### **PUBLIC HEALTH DEPARTMENT[641]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.105A, the Department of Public Health hereby amends Chapter 70, “Lead Professional Certification,” Iowa Administrative Code.

Iowa Code section 135.105A directs the Department of Public Health to establish a program for the training and certification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner's immediate family while the measures are being performed. A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both lead inspection and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site. Iowa's law stipulates that rules could take effect only after the Department obtained authorization from the U.S. Environmental Protection Agency (EPA) for its program to train and certify lead inspectors and abaters. Iowa's program was authorized by the EPA on July 13, 1999.

The amendments make a number of changes to incorporate into Iowa rules guidance documents issued by the Department and the federal government and material that is covered in approved training programs. In addition, the Department has added a new rule to specify administrative enforcement procedures. Finally, the Department has added a requirement that lead-safe work practices training programs be approved by the Department and added provisions for the voluntary registration of individuals who have successfully completed these courses.

The Department has added definitions for “approved lead-safe work practices training program,” “component type,” “inconclusive classification,” “lead-free inspection,” “lead-safe work practices,” “lead-safe work practices training program,” “lead-safe work practices contractor,” “multifamily housing,” “negative classification,” “NIST 1.02 standard film,” “paint testing,” “performance characteristics sheet (PCS),” “positive classification,” “random selection,” “registered lead-safe work practices contractor,” “regulated entity,” “substrate,” “substrate correction,” “substrate correction value,” “targeted selection,” “testing combination,” “worst case selection,” and “XRF reading.” The definitions of “clearance level,” “clearance testing,” “common area,” “component” or “building component,” “containment,” “dust-lead hazard,” “elevated blood lead (EBL) inspection,”

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“firm,” “hazardous lead-based paint,” “lead abatement,” “lead-based paint,” “lead-based paint activities,” “lead hazard screen,” “lead inspection,” “ongoing lead-based paint maintenance,” “paint stabilization,” “reduction,” “risk assessment,” “room,” “soil-lead hazard,” “standard treatments,” “visual risk assessment,” and “wipe sample” have been modified.

Work practice standards for conducting lead-free inspections and paint testing have been added. The work practice standards for conducting lead inspections, elevated blood lead (EBL) inspections, risk assessments, lead hazard screens, lead abatement, and clearance testing have been modified. The Department has clarified the minimum surface area for taking dust wipe samples, the records that a training provider must keep for each course offered and for each student taking a course, the amount of time that a student taking a course may miss before the time must be made up, that the eight hours of case management training for EBL inspectors is to be provided by the Department’s childhood lead poisoning prevention program, and the method for offering the state certification examination.

There are no substantial changes from these new definitions, modified definitions, modifications to work practice standards, and other clarifications because they have all been included in guidance documents issued by the Department and the federal government and have been covered in the courses that individuals must take to become certified lead professionals. These items have been changed in Chapter 70 to allow certified lead professionals to find in one place all of the information that they need to comply with Iowa rules.

There are also no substantial changes from adding the administrative enforcement procedures to Chapter 70.

The requirement that lead-safe work practices training programs be approved by the Department and provisions for the voluntary registration of individuals who have successfully completed these courses is a substantial change. The Department has added these provisions to Chapter 70 at the request of the organizations that are offering these training programs and the individuals who have taken them. Agencies that must comply with the lead-safe housing regulation promulgated by the U.S. Department of Housing and Urban Development (HUD) must use contractors who have completed these courses to perform work in HUD-assisted housing. The voluntary registration will make it easier for these agencies to locate contractors who can do this work. In addition, the voluntary registration will provide recognition for those who have completed the course and will make it easier for the public to locate contractors who have had specific training in lead-safe work practices.

The Department has determined that these rules are not subject to waiver or variance because Iowa’s program must be as protective as the EPA regulations which do not allow variances or waivers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2004, as **ARC 3134B**. A public hearing was held over the Iowa Communications Network on February 24, 2004. The Department did not receive any formal comments. However, the Department is making the following changes to the Notice in response to discussions with certified lead professionals and internal staff review of the Notice:

1. The definition of “standard treatments” has been modified to include additional language from 24 CFR Part 35. This clarifies the lead hazard reduction activities that are included in standard treatments. The definition now reads as follows:

“‘Standard treatments’ means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a residential dwelling without the benefit of a risk assessment or other evaluation pursuant to 24 CFR 35.1335. Standard treatments consist of the stabilization of all deteriorated interior and exterior paint, the provision of smooth and cleanable horizontal hard surfaces, the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint), and the treatment of bare soil to control known or presumed soil-lead hazards.”

2. The definition of “target housing,” which was not amended in the Notice, has been modified to include any nonresidential building where lead-based paint activities are conducted prior to or during the conversion of the nonresidential building to target housing. This change is being made to ensure that the Department’s rules and interpretations are consistent with those of the Iowa Department of Economic Development, which provides funding for many of these conversions. The definition now reads as follows:

“‘Target housing’ means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child under the age of six years resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom. Target housing also includes any nonresidential building where lead-based paint activities are conducted prior to or during the conversion of the nonresidential building to target housing.”

3. A new paragraph “a” has been added to subrule 70.6(1) and the subsequent paragraphs have been relettered. The new paragraph requires certified lead inspector/risk assessors and certified elevated blood lead (EBL) inspector/risk assessors to notify the Department in writing no later than 30 days after conducting a lead-free inspection in a residential dwelling or child-occupied facility. This requirement was added because the Department has identified numerous problems with these inspection reports while conducting compliance spot checks of certified lead inspector/risk assessors and certified elevated blood lead (EBL) inspector/risk assessors.

If these inspections and reports are not done according to the regulations, EPA or HUD may determine that the owner of the property where the lead-free inspection was conducted is in violation of the federal real estate disclosure regulations. EPA and HUD have levied substantial fines for violations of the federal real estate disclosure regulations. Therefore, the Department needs to protect the interests of the property owners by increasing compliance spot checks of the certified lead inspector/risk assessors and certified elevated blood lead (EBL) inspector/risk assessors who conduct these inspections. The best way to do this is to require notification that a lead-free inspection has been done so that the Department will know which certified lead inspector/risk assessors and certified elevated blood lead (EBL) inspector/risk assessors to target for increased compliance spot checks. New paragraph 70.6(1)“a” reads as follows:

“a. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall notify the department in writing no later than 30 days after conducting a lead-free inspection in a residential dwelling or child-occupied facility. The notification shall include the following information:

“(1) The address where the lead-free inspection was conducted.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“(2) The dates when the lead-free inspection was conducted.

“(3) The name, address, telephone number, Iowa certification number, and signature of the contact for the certified firm that conducted the lead-free inspection.

“(4) The name, address, telephone number, Iowa certification number, and signature of each certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor who conducted the lead-free inspection.”

4. Language has been added to 70.6(1)“b”(4)“2” and 70.6(1)“c”(6)“3” to require that a certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor use the manufacturer’s standard for the X-ray fluorescence analyzer as well as the NIST standard. This change was suggested by a certified lead inspector/risk assessor who felt that using the manufacturer’s standards would make the results of an inspection more defensible if the results were ever challenged in a court case. Paragraphs 70.6(1)“b”(4)“2” and 70.6(1)“c”(6)“3” are identically worded. The text of the paragraphs now reads as follows:

“The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use standards provided by the manufacturer and the NIST 1.02 standard film for calibration of the X-ray fluorescence analyzer.”

5. Language to clarify that the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination in an elevated blood lead (EBL) inspection was added to 70.6(3)“a”(2). The Notice of Intended Action included this language for the other work practice standards, but it was inadvertently omitted from the work practice standards for an elevated blood lead (EBL) inspection. Subparagraph 70.6(3)“a”(2) now reads as follows:

“(2) The certified elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room. One sample shall be taken for each testing combination in a room. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. If a testing combination is not tested, it shall be assumed to be painted with lead-based paint.”

6. Language to specify the conditions that must be identified as potential lead-based paint hazards has been added to paragraph “b” of subrule 70.6(7). This language has been included in guidance documents issued by the Department, but was inadvertently omitted from the Notice of Intended Action.

“b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead-based paint hazards and to assess the extent and causes of the paint deterioration. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall assess each component in each room, including each exterior side. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall identify the following conditions as potential lead-based paint hazards:

“(1) All interior and exterior surfaces with deteriorated paint.

“(2) Horizontal hard surfaces, including but not limited to floors and windowsills, that are not smooth or cleanable.

“(3) Dust-generating conditions, including but not limited to conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint.

“(4) Bare soil in the play area and dripline of the home.”

7. Subparagraph 70.6(7)“c”(9) was added to clarify that the written report for a visual risk assessment must include specific locations of bare soil in the play area and the dripline of a home. This language has been included in guidance documents issued by the Department, but was inadvertently omitted from the Notice of Intended Action. The new subparagraph reads as follows:

“(9) Specific locations of bare soil in the play area and the dripline of a home;”

8. At the recommendation of the Assistant Attorney General assigned to the Department, the phrase “application of penalties” has been changed to “imposition of penalties” in the catchwords of rule 641—70.10(135).

These amendments were adopted by the State Board of Health on March 10, 2004.

These amendments will become effective on May 5, 2004.

These amendments are intended to implement Iowa Code section 135.105A.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 70] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 3134B**, IAB 2/4/04.

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## ARC 3235B

### TRANSPORTATION DEPARTMENT[761]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation, on March 10, 2004, adopted amendments to Chapter 520, “Regulations Applicable to Carriers,” Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the February 4, 2004, Iowa Administrative Bulletin as **ARC 3122B**.

Iowa Code section 321.449 as amended by 2003 Iowa Acts, chapter 8, section 17, requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the Federal Motor Carrier Safety Regulations on the effective dates specified in the Federal Register. Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous

## TRANSPORTATION DEPARTMENT[761](cont'd)

materials intrastate are subject to the Federal Hazardous Materials Regulations on the effective dates specified in the Federal Register. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the Federal Register to allow a period for public comment, and, after adoption, the final regulations are again published in the Federal Register. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations that have become final and effective since the 2002 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations

Parts 390, 391 and 393 (FR Vol. 67, No. 191, Page 61818, 10-02-02)

This final rule makes technical corrections throughout 49 CFR to various rules containing outdated references, grammatical corrections for clarity and correction of an error in the final rule on brake performance requirements for commercial motor vehicles published on August 9, 2002, in the Federal Register.

Part 397 (FR Vol. 67, No. 193, Page 62191, 10-04-02)

This final rule eliminates an outdated requirement for certain motor vehicle operators to stop periodically to check their tires. Eliminating this requirement enhances the security of hazardous materials shipments.

Part 390 (FR Vol. 67, No. 196, Page 63019, 10-09-02)

This rule makes a technical correction to the regulations.

Part 393 (FR Vol. 67, No. 200, Page 63966, 10-16-02)

This final rule makes a technical correction to the standards for protection against shifting and falling cargo.

Parts 172, 174, 175, 176 and 177 (FR Vol. 67, No. 212, Page 66571, 11-01-02)

This final rule makes changes to the hazardous materials regulations to require shippers and carriers to retain a copy of each hazardous material shipping paper, or an electronic image thereof, for a period of 375 days after the date of the hazardous material being accepted by a carrier.

Part 171 (FR Vol. 68, No. 5, Page 1013, 01-08-03)

This final rule amends the hazardous materials regulations by updating incorporation by reference materials to include the most recent amendments to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air and the United Nations Recommendations on the Transport of Dangerous Goods.

Part 107 (FR Vol. 68, No. 6, Page 1342, 01-09-03)

This final rule reduces the registration fees paid by persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials, in order to eliminate the unexpended balance in the Hazardous Materials Emergency Preparedness Grants Fund. The Research and Special Programs Administration (RSPA) is also revising its regulations to provide that a not-for-profit organization will pay the same registration fee as a small business.

Part 107 (FR Vol. 68, No. 48, Page 11748, 03-12-03)

This final rule adds the definition of "administrator" in several sections of the Code of Federal Regulations for clarification purposes.

Part 172 (FR Vol. 68, No. 57, Page 14510, 03-25-03)

This final rule establishes new requirements to enhance the security of hazardous materials transported in commerce. Shippers and carriers of certain highly hazardous materials must develop and implement security plans. In addition, all shippers and carriers of hazardous materials must ensure that their employee training includes a security component.

Parts 107, 171, 172, 173, 177, 178 and 180 (FR Vol. 68, No. 75, Page 19258, 04-18-03)

This final rule adopts a number of revisions to the hazardous materials regulations to update and clarify the regulations on the construction and maintenance of cargo tank motor vehicles. The rule also addresses three National Transportation Safety Board recommendations and several petitions for rule making to increase the safety of cargo tanks transporting hazardous materials. These changes will provide greater flexibility in design and construction of cargo tanks, and reduce operating burdens for owners, operators and manufacturers of cargo tank motor vehicles.

Parts 107, 171, 176 and 177 (FR Vol. 68, No. 86, Page 23832, 05-05-03)

This interim final rule incorporates into the hazardous materials regulations a requirement that shippers and transporters of certain hazardous materials comply with federal security regulations that apply to motor carrier and vessel transportation. In addition, this interim final rule revises the procedures for applying for an exemption from the hazardous materials regulations to require applicants to certify compliance with applicable federal transportation security laws and regulations. This interim final rule will ensure that shippers and transporters are aware of and comply with their security obligations.

Parts 107, 171, 173, 177 and 180 (FR Vol. 68, No. 89, Page 24653, 05-08-03)

This final rule amends certain requirements, extends certain compliance dates and makes minor editorial corrections to the hazardous materials regulations applicable to the maintenance, requalification, repair and use of U.S. Department of Transportation specification cylinders.

Part 171 (FR Vol. 68, No. 102, Page 31627, 05-28-03)

This final rule announces the Office of Management and Budget's (OMB) approval of information collection request "Hazardous Materials Security Plans." The OMB approved this information collection until April 30, 2006. This final rule also makes appropriate revisions to regulations concerning the Paperwork Reduction Act to incorporate this new information collection approval.

Parts 171, 173, 177 and 178 (FR Vol. 68, No. 104, Page 32409, 05-30-03)

This final rule amends the hazardous materials regulations to permit, for an interim period and subject to certain unloading conditions, the unloading of intermodal and United Nations portable tanks transporting certain liquid hazardous materials when those tanks are not equipped with a thermal means of remote activation of the internal self-closing stop valves fitted on the bottom discharge outlets. Permitting such unloading for an interim period affords operators time to bring the portable tanks into conformance with the regulations.

## TRANSPORTATION DEPARTMENT[761](cont'd)

Parts 107, 171, 173, 177 and 180 (FR Vol. 68, No. 105, Page 32679, 06-02-03)

This correction to a final rule makes changes to several compliance dates in a final rule published May 8, 2003. That rule made revisions to certain cylinder requirements. The compliance date for the final rule is corrected to permit immediate voluntary compliance. The delayed compliance dates for two other requirements in the final rule are also corrected.

Parts 171, 172, 173, 178 and 180 (FR Vol. 68, No. 147, Page 44992, 07-31-03)

This rule amends the hazardous materials regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packaging groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. These revisions are necessary to facilitate the transport of hazardous materials in international commerce.

Parts 390 and 398 (FR Vol. 68, No. 155, Page 47860, 08-12-03)

This final rule requires motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, to comply with the applicable safety regulations when they are directly compensated for such services and the vehicle is operated beyond a 75-air-mile radius from the driver's normal work-reporting location. The Federal Motor Carrier Safety Administration has revised its proposed distance threshold to focus on the distance that the driver operates the vehicle, as opposed to the distance that the passengers are transported. Through this rule, these motor carriers, drivers, and vehicles are now subject to the same safety requirements as motor coach operators, except for the commercial driver's license, and controlled substances and alcohol testing regulations.

Parts 171, 172, 173, 177, 178, 179 and 180 (FR Vol. 68, No. 157, Page 48562, 08-14-03)

This final rule amends the hazardous materials regulations by incorporating miscellaneous changes based on petitions for rule making and Research and Special Programs Administration's initiatives. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

Parts 172, 178, and 180 (FR Vol. 68, No. 170, Page 52363, 09-03-03)

In response to appeals submitted by persons affected by a final rule published on April 18, 2003, to update and clarify requirements in the hazardous materials regulations applicable to construction and maintenance of cargo tank motor vehicles, this final rule amends certain requirements and makes minor editorial corrections.

Parts 107 and 171 (FR Vol. 68, No. 173, Page 52844, 09-08-03)

This final rule increases Research and Special Programs Administration's (RSPA) maximum and minimum civil penalties for a known violation of federal hazardous materials transportation law or a regulation issued under that law. In addition, RSPA is updating the address to which civil penalty payments must be sent as well as making editorial changes to the procedural regulations for issuing an administrative determination of preemption.

Parts 107 and 180 (FR Vol. 68, No. 187, Page 55542, 09-26-03)

This final rule extends the compliance date of the regulations contained in 49 CFR 107.805(f) and 180.209(g) of the hazardous materials regulations that require persons who perform visual requalification of U.S. Department of Transportation specification cylinders to obtain approval from the RSPA and to mark the requalifier identification number assigned by RSPA on cylinders successfully requalified after September 30, 2003. This September 30, 2003, date is extended to May 31, 2004.

Parts 391, 393, and 396 (FR Vol. 68, No. 189, Page 56196, 09-30-03)

This rule makes technical amendments to the Federal Motor Carrier Safety Regulations (FMCSRs). These technical amendments were needed to correct inadvertent errors and omissions, update mailing addresses, remove obsolete references, and make minor editorial changes to improve clarity and consistency. No substantive changes have been made to the FMCSRs.

Part 395 (FR Vol. 68, No. 189, Page 56208, 09-30-03)

This rule makes technical amendments to the hours of service regulations. These technical amendments are needed to correct inadvertent errors and omissions, and make minor editorial changes to improve clarity and consistency. The amendments do not make substantive changes.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective May 5, 2004.

Rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, 2002-2003). The department also adopts “Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations; Final Rule” as published in the Federal Register on April 28, 2003 (68 FR 22455).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, 2002-2003).

[Filed 3/10/04, effective 5/5/04]

[Published 3/31/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 3/31/04.

**ARC 3236B****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 321.178, the Department of Transportation, on March 10, 2004, adopted amendments to Chapter 600, "General Information," adopted new Chapter 634, "Driver Education," adopted amendments to Chapter 635, "Motorcycle Rider Education (MRE)," and adopted new Chapter 636, "Motorized Bicycle Rider Education," Iowa Administrative Code.

2002 Iowa Acts, chapter 1140, sections 32 and 33, (Iowa Code section 321.178) transferred the responsibilities for administering the driver education program from the Department of Education to the Department of Transportation and required the Department of Transportation to adopt rules. The Department of Transportation is adopting two new chapters: Chapter 634, "Driver Education," and Chapter 636, "Motorized Bicycle Rider Education." These amendments also make the following changes to Chapters 600 and 635:

- Rescind three rules in Chapter 600. The information in these three rules is included as appropriate in Chapter 634, 635 or 636.
- Add a contact office for Chapter 635.

Notice of Intended Action for these rules was published in the February 4, 2004, Iowa Administrative Bulletin as **ARC 3123B**.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code chapter 321.

These rules will become effective May 5, 2004.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [600.12 to 600.14, Ch 634, 635.2(2), 635.6, 635.7, Ch 636] is being omitted. These rules are identical to those published under Notice as **ARC 3123B**, IAB 2/4/04.

[Filed 3/10/04, effective 5/5/04]  
[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

**ARC 3246B****VOLUNTEER SERVICE, IOWA  
COMMISSION ON[555]****Adopted and Filed**

Pursuant to Executive Order Number 48 and Iowa Code section 17A.22, the Iowa Commission on Volunteer Service hereby adopts amendments to Chapter 1, "Organization and Operation," and Chapter 5, "Due Process," Iowa Administrative Code.

Notice of Intended Action was published in IAB Volume XXVI, No. 11, p. 1242, on January 21, 2004, as **ARC 3107B**.

These amendments incorporate minor revisions into Chapter 1, including changing the quorum from two-thirds of the voting members of the Commission to one-half of the voting members plus one. In addition, information in Chapter 1 that is no longer accurate is updated. These amendments also include revisions to Chapter 5 that provide an appeals process for staff and committee decisions.

These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted March 10, 2004.

These amendments will become effective May 5, 2004.

These amendments are intended to implement Executive Order Number 48.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1, 1.2, 5.1] is being omitted. These amendments are identical to those published under Notice as **ARC 3107B**, IAB 1/21/04.

[Filed 3/11/04, effective 5/5/04]  
[Published 3/31/04]

[For replacement pages for IAC, see IAC Supplement 3/31/04.]

AGENCY	RULE	DELAY
Medical Examiners Board[653]	21.4 [IAB 12/24/03, <b>ARC 3042B</b> ]	Effective date of January 28, 2004, delayed 70 days by the Administrative Rules Review Committee at its meeting held January 6, 2004. [Pursuant to §17A.4(6)] At its meeting held March 8, 2004, the Committee lifted the delay, effective March 9, 2004.
College Student Aid Commission[283]	21.1“10” [IAB 2/18/04, <b>ARC 3156B</b> ]	Effective date of March 24, 2004, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 8, 2004. [Pursuant to §17A.4(6)]
Human Services Department[441]	130.3(3)“ab”; amendments to Ch 201 [IAB 10/29/03, <b>ARC 2900B</b> ]	Effective date of January 1, 2004, delayed 70 days by the Administrative Rules Review Committee at its meeting held November 10, 2003. [Pursuant to §17A.4(6)] At its meeting held March 8, 2004, the Committee delayed the effective date until adjournment of the 2004 Session of the General Assembly. [Pursuant to §17A.8(9)]









**IOWA ADMINISTRATIVE BULLETIN**  
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